

Richard M. Rindler
Phone (202) 424-7771
Fax (202) 424-7647
rmrindler@swidlaw.com

www.swidlaw.com

September 30, 2005

VIA ELECTRONIC FILING

Marlene R. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket No. 05-65: SBC/AT&T Merger Applications

Dear Ms. Dortch:

In connection with the Commission's consideration of the SBC/AT&T merger, TDS Metrocom, LLC ("TDS"), along with a number of the other Competitive Local Exchange Carriers ("CLECs") have proposed various conditions be imposed in order to seek to ameliorate the anti-competitive effects of the proposed merger, if the FCC determines to permit the merger.¹ TDS will not reiterate those effects or its proposed conditions in detail at this time. Instead, TDS provides further detail concerning the current circumstances against which the proposed merger must be judged.

Price Squeeze – TDS has proposed that to assist in ensuring local competition equivalent to pre-merger levels access to recently priced UNEs must be ensured. TDS has proposed that in light of the recently completed UNE rate proceedings in the SBC states in which it operates,² SBC agree to cap UNE rates for five years at their current levels. This hiatus would provide some very important regulatory stability allowing for further network investment by CLECs. Given the recent increases in UNE loop rates, this should impose no hardship on SBC. The above cost nature of the new UNE rates, is starkly evident when viewed against SBC's recent "win back" campaigns in Michigan and Wisconsin. As evidenced in Exhibit A, SBC is offering unlimited local service in Lansing, Michigan for 12 months for \$9.39 per month. The price squeeze is evident when this rate is contrasted with the rate of \$10.77 per month for just the two wire analog UNE loop portion of the overall service set recently by the Michigan Public Service

¹ See 2-9, Letter from Brad Mutschelknaus, Kelley Drye & Warren LLP to Marlene R. Dortch (September 22, 2005) ("September 22 ex parte")

² Illinois, Michigan and Wisconsin

Commission in Docket U-13531 for Lansing (Access Area(B)). (Exhibit B) The Lansing price squeeze is not aberrational. In Wisconsin, the Commission recently set the two wire analog UNE loop rate at \$13.17 for Madison. (Exhibit C) At the same time TDS' customers began receiving a win back offer from SBC for local service at \$3.20 per month for 12 months. (Exhibit D)

Despite this evident ability and intent to use its existing market dominance anti-competitively, absent a cap, SBC could at any time seek to obtain still higher UNE rates. Under Wisconsin law, the Wisconsin Commission, absent certain extenuating circumstances, is required to complete such a proceeding in 180 days. (Exhibit E, Section 196.197(3)(a)) Without the required extensive financial and technical support AT&T brought to bear in these recent cost cases, no CLEC, or group of small CLECs, can be expected to be in a position to effectively respond to such a proceeding. Clearly aware of this, SBC in Michigan is currently seeking an amendment to the state telecommunications act to eliminate what it describes as "arbitrary minimum time frames," so that it could initiate a new UNE cost proceeding as long as one was not already pending. (Exhibit F)

Wire center "Recount" - TDS has also requested that the FCC condition the merger on a "recount" of the wire centers that are deemed impaired under the test announced by the FCC in its TRRO decision³. This recount is appropriate, indeed essential, given this transformational merger. It is clear from real world facts that but for certain legal niceties, AT&T and SBC are already acting as affiliated entities. Again, looking at the states in which TDS operates, AT&T has either simply withdrawn from public utility proceedings in which it had been the lead opponent against SBC proposals or has accepted via settlement agreement terms which benefit SBC. (Exhibit G)⁴

Affiliate is defined in Rule 51.5 which states:

The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an entity interest (or the equivalent thereof) of more than 10 percent (Emphasis added.)

One could not imagine a broader definition of the term "affiliate." The definition adopted by the FCC allows affiliation to be shown either through ownership or control, whether shown directly or indirectly. The merger agreement in January of 2005, both parties seeking approval of the merger and both shareholder groups having approved the merger is sufficient to meet this broad definition of affiliation.

³ September 22 ex parte, at 9-10

⁴ Compare, e.g. 07/28/05 proposal to 05/06/05 proposal - § 3(vi) to § 1.1(vi); § 4.6.1 to § 2.5; § 10.2.2.2 to § 1.4.2.4.1

Even if AT&T were not already acting as an SBC affiliate, the FCC should restart the clock on its collocation impairment test so that it more accurately reflects reality. There can be no question that the elimination of AT&T and MCI as competitors markedly effects whether the number of fiber based collocators represents competition in the context of the merged entities. In order to ensure the continued level of local competition the delisting of wire centers after the adjustment for the mergers, should be frozen for five years.

Accordingly, TDS asks that in the event the Commission determines to approve this merger it be conditioned as set forth herein and in the September 22 ex parte.

Sincerely,



Richard M. Rindler
Attorney for TDS Metrocom, LLC

cc: Chairman Kevin J. Martin
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Mr. Daniel Gonzales
Ms. Michelle Cary
Mr. Russell Hanser
Ms. Jessica Rosenworcel
Mr. Scott Bergmann
Mr. Thomas Navin
Mr. William Dever
Mr. Marcus Maher

EXHIBIT A



Come back

for

Phone Service

and



UNLIMITED Local Service

just **\$9.39** per month
— OR LESS — for 12 months

INCLUDES:

- SBC Local Phone Line with
UNLIMITED Local Calling

(See reverse for important details.)

Dear

When you sign up for phone service, you should not have to pick from packages that include features you don't want or need

When you come back to SBC Michigan, we can promise you good, reliable local phone service for a great price, without any unwanted frills

Save on the UNLIMITED local service you want.

You can call as many people as you like and talk as long as you like. This special 12-month low rate for our no-frills local phone service includes a \$5 monthly bill credit each month for the first 12 months. That's a total savings of \$60 for the year! With this bill credit, our unlimited local service is only \$9.39 per month for returning local phone service customers!

Save on an SBC Long Distance Plan — if you want it.

As a returning local service customer, you can take advantage of special low rates and great long distance calling options. Whether you are interested in a low per-minute rate or a fixed monthly rate, we have various plans to fit your needs. It's your call!

Save on High-Speed Internet Service — if it's in the picture.

If you want super-fast Internet service, call now and get SBC Yahoo! DSL Pro with Internet speeds up to 3Mbps! At only \$29.99 per month, you can log on and browse the Internet anytime because the high-speed SBC Yahoo! DSL connection is instantly available

(Other monthly charges apply. See reverse for details.)

(over please)

CONNECT WITH
EVERYDAY
• SAVINGS.

**CALL 1-888-407-3963 TODAY
AND MENTION PROMO CODE**



Come back for the services you want on one convenient bill.

Getting all your services from one reliable company is a convenient and positive experience
Especially when every calling feature or service is chosen entirely by you.

Call 1-888-407-3963 today to take advantage of exclusive savings just for returning customers.

Sincerely,

Jennifer M. Haig

Jennifer Haig
Area Manager, Consumer Services



Refer family and friends to
earn cash rewards.
www.sbclocal.com/1827/SBC/RWDG

P.D. Valoramos mucho su preferencia. Si prefiere comunicarse con nosotros en español, por favor
llámenos al 1-888-786-9981 y nos dará mucho gusto ayudarlo. ¡Gracias!

All offers for customers currently with another carrier who subscribe to new SBC residential local service provided by SBC Michigan. Local service: Some services not available in all areas or all calls. Excludes taxes and surcharges. Rates vary by area and type of service. Bill Credit Offer: Requires purchase of local service. Tariffed rate will appear on bill, and credit will appear as a \$5.00 credit on the first through twelfth consecutive months' bills. After expiration of 12 months, then-current tariffed rate applies. Offer expires 9-30-05. Customer will forfeit any monthly bill credits not yet received upon refection of local service carrier other than SBC Michigan or discontinuation of service with SBC Michigan. Cannot be combined with other promotions. Other restrictions may apply. Long Distance: Domestic direct-dialed long distance service provided by SBC Long Distance. SBC Yahoo! DSL: You will also be charged a monthly FUSF (Federal Universal Service Fund) cost recovery fee to help cover charges from our data transport supplier pursuant to state and federal telecom regulations. This fee is not a tax or government-required charge. New residential DSL customers only. SBC local service and one-year term required. \$200 early termination fee. At end of term, then-current monthly rate applies. Pricing based on customer self-install on existing line. \$150-\$200 additional charge if technician install is required or desired. Equipment charges will appear on the first bill along with any corresponding and offsetting instant credits. Laptop users and some desktop users may need to purchase an Ethernet card. Billing begins on service activation date. Service not available in all areas. Subject to change without notice. Maximum speed achieved depends on customer location. Acceptance of Terms of Service required. Taxes, fees and surcharges extra. Other restrictions apply. \$29.99 promotional pricing available for residential customers who purchase the SBC Yahoo! DSL Pro service. Offer only valid for orders placed through an SBC sales channel; third-party channels excluded. Static IP products not included. Order for SBC Yahoo! DSL Pro must be placed by 7/31/05. Offer not valid with any other SBC Yahoo! DSL promotion. SBC Yahoo! DSL is an information service that combines DSL, transport, Internet access and applications from SBC Internet Services, with customized content, services, and applications from Yahoo! Inc. Yahoo!, the Yahoo! logos and other product and service names are the trademarks and/or registered trademarks of Yahoo! Inc. SBC, the SBC logos and other product names are trademarks of SBC Knowledge Ventures, L.P. All other brand names may be trademarks or registered trademarks of their respective owners. © 2005 SBC Knowledge Ventures, L.P. and Yahoo! Inc. All rights reserved. Further details are provided during enrollment and registration.

EXHIBIT B

	SBC MI Recurring	SBC Michigan Non-Recurring Connect	Disconnect
Unbundled Loops			
2W Analog Basic - Access Area A	\$ 9.13		
2W Analog Basic - Access Area B	\$ 10.77		
2W Analog Basic - Access Area C	\$ 14.20		
2W Analog PBX Grd Start - Access Area A	\$ 9.28		
2W Analog PBX Grd Start - Access Area B	\$ 11.05		
2W Analog PBX Grd Start - Access Area C	\$ 14.47		
2W Analog COPTS Coin - Access Area A	\$ 9.45		
2W Analog COPTS Coin - Access Area B	\$ 11.32		
2W Analog COPTS Coin - Access Area C	\$ 14.72		
2W Analog EKL - Access Area A	\$ 10.35		
2W Analog EKL - Access Area B	\$ 12.57		
2W Analog EKL - Access Area C	\$ 15.88		
4W Analog - Access Area A	\$ 21.83		
4W Analog - Access Area B	\$ 28.66		
4W Analog - Access Area C	\$ 33.16		
DIGITAL			
2W Digital ISDN-BRI - Access Area A	\$ 12.66		
2W Digital ISDN-BRI - Access Area B	\$ 16.22		
2W Digital ISDN-BRI - Access Area C	\$ 19.93		
4W Digital - Access Area A	\$ 40.65		
4W Digital - Access Area B	\$ 44.01		
4W Digital - Access Area C	\$ 51.71		
D83 Loop - Access Area A	\$ 321.84		
D83 Loop - Access Area B	\$ 379.38		
D83 Loop - Access Area C	\$ 479.37		
xDSL Capable loops			
PSD 1-5 and 7			
2W ADSL/DSL Compatible - Access Area A	\$ 9.51		
2W ADSL/DSL Compatible - Access Area B	\$ 11.42		
2W ADSL/DSL Compatible - Access Area C	\$ 17.02		
PSD 3			
4W HDSL Compatible - Access Area A	\$ 17.51		
4W HDSL Compatible - Access Area B	\$ 20.98		
4W HDSL Compatible - Access Area C	\$ 32.35		
IDSL-Loops			
IDSL Loop Access Area A - Metro	\$ 12.88		
IDSL Loop Access Area B - Suburban	\$ 16.22		
IDSL Loop Access Area C - Rural	\$ 19.93		
High Frequency Portion of the Loop			
HFPL Loop - Access Area A	\$ 4.75		
HFPL Loop - Access Area B	\$ 5.71		
HFPL Loop - Access Area C	\$ 8.51		
OCS Modification	\$ -		
Cross Connect Configuration - Company Owned	\$ 0.45	\$ 11.46	\$ 11.46
Cross Connect Configuration - CLEC Owned	\$ -	\$ 11.46	\$ 11.46
Cross Connect Configuration - CLEC Owned - Non-Integrated	\$ 0.45		
Company-Owned Splitter - Line at a time	\$ 1.33		
Company-Owned Splitter - Shelf at a time			
HFPL Service Order Charges			
Installation		\$ 3.62	\$ 1.77
Subsequent		\$ 3.46	\$ -
Record Order		\$ 2.13	\$ -
Loop NRC			
Service Ordering Charge - Analog Loops - Initial - Per Occasion		\$ 3.62	\$ 1.77
Service Ordering Charge - Analog Loops - Subsequent - Per Occasion		\$ 3.46	\$ -
Service Ordering Charge - Analog Loops - Record Work Only - Per Occasion		\$ 2.13	\$ -
Service Ordering (DS0) - Administrative Charge		\$ -	\$ -
Service Provisioning (DS0)		\$ -	\$ -
Service Ordering (DS1) - Administrative Charge		\$ 3.54	\$ 2.13
Service Provisioning (DS1) (both UNE-L and new UNE-P)		\$ 63.95	\$ 41.42
Service Ordering (DS3) - Administrative Charge		\$ 3.54	\$ 2.13
Service Provisioning (DS3) (both UNE-L and new UNE-P)		\$ 91.29	\$ 31.48
Line Connection Charge - Analog Loop - Per Termination (both UNE-L and new UNE-P)		\$ 20.43	\$ 6.71
Service Coordination Fee - Per carrier bill, per central office	\$ 5.39		

EXHIBIT C

Appendix B

UNBUNDLED NETWORK ELEMENTS TYPE	Recurring Rates Determined Herein	Previous Recurring Rates ¹
UNBUNDLED LOOPS - END TO END		
2-Wire Analog - Access Area A	\$11.53	\$9.51
2-Wire Analog - Access Area B	\$13.17	\$10.87
2-Wire Analog - Access Area C	\$15.86	\$15.25
4-Wire Analog - Access Area A	\$27.21	\$24.56
4-Wire Analog - Access Area B	\$32.36	\$27.70
4-Wire Analog - Access Area C	\$38.45	\$37.07
2-Wire Digital 160 Kbps [ISDN-BRI] - Access Area A	\$15.39	\$14.36
2-Wire Digital 160 Kbps [ISDN-BRI] - Access Area B	\$18.23	\$17.00
2-Wire Digital 160 Kbps [ISDN-BRI] - Access Area C	\$21.83	\$23.39
Ground Start - Access Area A	\$12.10	\$11.80
Ground Start - Access Area B	\$14.28	\$13.35
Ground Start - Access Area C	\$17.18	\$18.02
Coin - Access Area A	\$12.39	\$9.96
Coin - Access Area B	\$14.64	\$11.47
Coin - Access Area C	\$17.57	\$16.08
EKL ² - Access Area A	\$14.92	\$15.37
EKL - Access Area B	\$17.83	\$16.95
EKL - Access Area C	\$21.01	\$21.71
2 Wire xDSL - Access Area A	\$11.69	\$9.26
2 Wire xDSL - Access Area B	\$12.17	\$10.06
2 Wire xDSL - Access Area C	\$13.17	\$13.61
4 Wire xDSL - Access Area A	\$21.09	\$18.32
4 Wire xDSL - Access Area B	\$22.26	\$19.94
4 Wire xDSL - Access Area C	\$24.37	\$27.09
DS-1 - Access Area A	\$44.95	\$59.91
DS-1 - Access Area B	\$54.25	\$68.05
DS-1 - Access Area C	\$52.66	\$98.83

¹ These rates were in effect when SBC filed its Petition on March 12, 2004. Subsequently, these rates were changed to reflect the Commission's Category 3 Decision in docket 6720-TI-161. Therefore, the tariff rates currently on file, which became effective on July 23, 2004, are higher than the rates shown above. On August 26, 2004, Federal District Court Judge Barbara Crabb, in *Wisconsin Bell, Inc. v. Bridge, et al.*, ___ F. Supp. 2d. ___, 2004 WL 1946317, (W. D. Wis. Aug. 26, 2004), vacated in part, remanded in part and dismissed party claims regarding the UND Decisions. The rate effects of this federal district court order, if any, are undetermined at this time.

² Electronic Key Line

EXHIBIT D

Come back for "NO-FRILLS" Phone Service and Save!

When you come back to SBC Wisconsin, we can promise you good, reliable local phone service for a great price without any unwanted frills.

Our SBC local phone service is currently only \$3.20 per month for returning customers. It offers you local calling for a fixed flat monthly rate. This special rate includes a \$5 monthly bill credit each month for 12 months off the current price of \$8.20.* That's a total savings of up to \$60 per year!

Our rates for SBC Long Distance, High-speed Internet and Satellite TV can also be described in the same simple way.

"Cheap!"

CALL **1-800-423-8809** TODAY
and mention promo code WE!

WWW.SBCWI.COM



Local Calling

Only **\$3.20** per month*

Includes:

- SBC local phone service
- Low per-call rates for local calls



CONNECT WITH
EVERYDAY
•SAVINGS.

EXHIBIT E

1. It may not elect to be subject to price regulation for a period of 3 years after returning to rate-of-return regulation.

2. It may be subject to a full rate case proceeding before the commission.

(5) **INVESTMENT COMMITMENTS.** (a) Within 60 days after a telecommunications utility elects to become price regulated under sub. (1), the telecommunications utility shall file with the commission a plan outlining the telecommunications utility's commitment to invest in telecommunications infrastructure improvements in this state over a period of not less than 6 years.

(b) An investment plan filed with the commission shall include all of the following:

1. A description of the level of planned investment in technological or infrastructure enhancement.

2. A description of the extent to which planned investment will make new telecommunications technology available to customers or expand the availability of current technology.

3. A description of the planned deployment of fiber-optic facilities or broad-band capabilities to schools, libraries, technical colleges, hospitals and colleges and universities in this state.

4. Target dates for the deployment of the planned technology and infrastructure improvements.

5. For a telecommunications utility with more than 500,000 access lines in use in this state at the time of electing to become price regulated, a level of planned investment in an amount of not less than \$700,000,000 within the first 5 years of the plan.

(c) 1. A telecommunications utility shall provide the commission, within one year after its election to become price regulated under sub. (1) and annually thereafter, a progress report relating to the telecommunications utility's investment in and deployment of infrastructure enhancements. A progress report shall include data relative to the telecommunications utility's operating and financial performance during the relevant period.

2. The commission shall consider the telecommunications utility's progress in meeting its investment plan infrastructure commitments when making penalty or incentive adjustments under sub. (1) (c).

(d) 1. Within 120 days after a telecommunications utility elects to become price regulated under sub. (1), the commission, after notice and opportunity for hearing, may rescind the election if the telecommunications utility fails to file an investment plan within the time specified in par. (a) or if the investment plan does not comply with par. (b). If a hearing is held, the time within which the commission may act may be extended an additional 30 days.

2. If the commission orders a rescission, the commission shall reinstate the level of regulation in effect at the time that the election was made and the telecommunications utility shall rescind any rate increases put into effect when the telecommunications utility operated as a price-regulated utility.

(e) Within 120 days after the completion of the first year and of the 2nd year that a telecommunications utility is price-regulated, the commission may reduce rates charged by the price-regulated telecommunications utility for services subject to price regulation by up to 2%. If a hearing is held, the time within which the commission may act may be extended an additional 30 days. The commission may reduce rates under this paragraph if, after notice and opportunity for hearing, the commission finds any of the following:

1. That the telecommunications utility did not file a progress report within the time specified in par. (c) 1.

2. That the progress report filed by the telecommunications utility does not contain sufficient information to permit the commission to adequately monitor the telecommunications utility's investment and deployment of infrastructure described in its investment plan.

3. That the actual or planned investment described in the progress report does not adequately provide for deployment of advanced infrastructure technologies, fails to exceed routine

facility upgrades necessary to maintain service quality or fails to meet goals identified in the investment plan.

(f) 1. Before January 1, 1996, and biennially thereafter, the commission shall submit a report to the joint committee on information policy and technology describing the status of investments in advanced telecommunications infrastructure in this state. The report shall include information on the progress made in all of the following areas:

a. Distance learning, including the number of schools and other educational institutions connected to distance learning networks.

b. Interconnection of libraries, including the number of libraries with video conferencing and network access capabilities.

c. Access to health care.

d. Education, health care and employment opportunities for the disabled and other persons in the home.

e. Integrated services digital network deployment.

f. Other infrastructure investments identified by the commission.

2. The commission shall include in the report under subd. 1. recommendations for improving the progress of investments in advanced telecommunications infrastructure.

3. The commission may combine its report under this paragraph with its report under s. 196.218 (5r).

History: 1993 a. 496; 1999 a. 29, 85; 2001 a. 16.

Cross Reference: See also chs. PSC 163 and 165, Wis. adm. code.

Sub. (2) (b) 3. is discussed. *Wisconsin Bell, Inc. v. Public Service Commission*, 2004 WI App 8, 269 Wis. 2d 409, 675 N.W.2d 242, 02-3163.

The definition of "new telecommunications services" in s. 196.19 (1m) (a) applies to sub. (3) (a). Section 196.19 (1m) only addresses the creation of "new telecommunications services." Sub. (3) address their regulation by allowing a company to change rates for existing "new telecommunications services" with only limited tariff and customer notice requirements. By incorporating s. 196.19 (1m) into sub. (3) (a), a complete regulatory scheme is established. *Wisconsin Bell, Inc. v. PSC*, 2004 WI App 223, 277 Wis. 2d 729, 691 N.W.2d 697, 03-2235.

196.197 Unbundled network elements. (1) **APPLICABILITY.** This section applies to a petition to determine rates and costs of unbundled network elements or unbundled service elements under federal or state law, but does not apply to a petition for arbitration.

(2) **PETITIONS.** (a) A telecommunications provider may file a petition with the commission in the form and containing the information required by the commission. The commission shall determine that a petition is complete if the petition includes all of the following:

1. A request that the commission determine rates and costs of unbundled network elements or unbundled service elements, an identification of the particular rates and costs that are the subject of the petition, and an identification of the relief sought by the petitioner.

2. One or more cost studies upon which the petitioner relies to support the rates and costs sought by the petitioner.

3. Prefiled written direct testimony upon which the petitioner relies to support the petition and relief sought.

4. Any other information required by the commission.

(b) 1. No later than 30 days after the date on which a petition is filed under par. (a), the commission shall determine whether a petition is complete under par. (a) and notify the petitioner about the determination. If the commission fails to make a determination within the 30-day period, the petition is considered to be complete. If the commission determines that a petition filed under par. (a) is incomplete, the commission shall state the reason for the determination and identify the information that is needed to determine that the petition is complete.

2. A petitioner may supplement a petition that the commission has determined to be incomplete. No later than 15 days after a petitioner files a supplemented petition under this subdivision, the commission shall determine whether the supplemented petition is complete and notify the petitioner about the determination. The commission shall determine that a supplemented petition is

196.197 REGULATION OF PUBLIC UTILITIES

complete if it contains the information identified in the determination under subd. 1. that is needed to determine that the petition is complete. If the commission fails to make a determination under this subdivision within the 15-day period, the petition is considered to be complete. If the commission determines that a petition supplemented under this subdivision is not complete pursuant to this subdivision, the commission shall state the reason for the determination under this subdivision and identify the information that is needed to determine that the petition is complete under this subdivision. There is no limit on the number of times that a petitioner may supplement a petition under this subdivision.

(c) A petitioner shall provide a copy of a petition filed under par. (a) or supplemented under par. (b) 2. to any other telecommunications provider that may be affected by the petition at the same time that the petition is filed or supplemented. A telecommunications provider that may be affected by the petition may respond to the petition and provide the commission any additional information.

(3) TIME FRAME FOR FINAL DECISIONS. (a) 1. This paragraph applies to petitions to determine 100 or less rates.

2. The commission shall enter a final decision under sub. (4) on a petition within 180 days after the date on which the petition is determined or considered to be complete under sub. (2) (b), unless an extension is agreed to under subd. 3. or granted under subd. 4.

3. With the approval of the commission, the petitioner may, within the 180-day period specified in subd. 2., agree to extend the time for a final decision.

4. The commission may, within the 180-day period specified in subd. 2. or within any extension approved under subd. 3., petition the circuit court for Dane County for an extension of time for entering a final decision on the petition. Within the 180-day period specified in subd. 2. or within any extension approved under subd. 3., the court may, upon a showing of good cause, grant an extension of not more than an additional 60 days. No more than one extension may be granted under this subdivision.

(b) 1. This paragraph applies to petitions to determine more than 100 rates.

2. The commission shall enter a final decision under sub. (4) on a petition within 270 days after the date on which the petition is determined or considered to be complete under sub. (2) (b), unless an extension is agreed to under subd. 3. or granted under subd. 4.

3. With the approval of the commission, the petitioner may, within the 270-day period specified in subd. 2., agree to extend the time for a final decision.

4. The commission may, within the 270-day period specified in subd. 2. or within any extension approved under subd. 3., petition the circuit court for Dane County for an extension of time for entering a final decision on the petition. Within the 270-day period specified in subd. 2. or within any extension approved under subd. 3., the court may, upon a showing of good cause, grant an extension of not more than an additional 90 days. No more than one extension may be granted under this subdivision.

(4) FINAL DECISION. The commission may reject a petition, grant a petition, or approve a petition with modifications or conditions. The commission shall issue a final decision that determines rates for the unbundled network elements and unbundled service elements specified in the petition, except to the extent that the evidence in the record is not sufficient for making such a determination with respect to a particular rate, unbundled network element, or unbundled service element.

History: 2003 a. 125.

196.198 Local measured telecommunications service.

(1) In this section, "extended community telephone service" means a telecommunications service by which a customer in one

exchange may call a customer in another exchange or combination of exchanges under a discounted toll charge plan.

(2) (a) Except as provided in sub. (3), a telecommunications utility that has more than 150,000 access lines in use in this state or a telecommunications provider that has more than 150,000 access lines in use in this state may not charge a residential customer for basic local exchange service based on the duration of a call or on the time of day that a call is made. This paragraph does not apply to an extended community telephone service.

(b) Paragraph (a) does not prohibit a price-regulated telecommunications utility from offering discounts based on the time of day that a call is made if the price-regulated telecommunications utility also offers basic local exchange service at a rate permitted under s. 196.196 (1).

(3) The commission may suspend the application of sub. (2) (a) in a particular geographical area for a telecommunications utility or a telecommunications provider if, after a contested case hearing, the commission determines that all of the following apply:

(a) Failure to suspend the application of sub. (2) (a) makes competition in that geographical area impractical.

(b) Suspending the application of sub. (2) (a) is beneficial to all of the following groups:

1. Residential customers in general.
2. Disabled customers.
3. Elderly customers.

History: 1993 a. 496.

196.199 Interconnection agreements. (1) DEFINITION. In this section, "interconnection agreement" does not include an interconnection agreement to which a commercial mobile radio service provider is a party.

(2) COMMISSION POWERS. (a) The commission has jurisdiction to approve and enforce interconnection agreements and may do all things necessary and convenient to its jurisdiction.

(b) The commission may promulgate rules that require an interconnection agreement to include alternate dispute resolution provisions.

(c) The commission shall promulgate rules that specify the requirements for determining under sub. (3) (a) 1m. a. whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to the agreement to provide telecommunications service to its customers or potential customers.

(3) ENFORCEMENT. (a) 1. Upon the filing of any of the following, the commission may investigate whether a party to an interconnection agreement approved by the commission has failed to comply with the agreement:

a. A complaint by a party to the agreement that another party to the agreement has failed to comply with the agreement and that the failure to comply with the agreement has a significant adverse effect on the ability of the complaining party to provide telecommunications service to its customers or potential customers.

b. A complaint filed under any provision of this chapter by any person that the commission determines may involve a failure to comply with the agreement by a party to the agreement.

1g. The commission may investigate whether a party to an interconnection agreement approved by the commission has complied with the agreement upon the filing of a petition by the party for a determination of whether the party has complied with the agreement if the petition demonstrates that a controversy has arisen over the party's compliance with the agreement. If the commission initiates an investigation under this subdivision, the commission may determine that a party to an interconnection agreement has failed to comply with the agreement only if a complaint is filed under subd. 1. a. in which the complaining party alleges that the party's failure to comply with the agreement has a signifi-

EXHIBIT F

Sen. _____ offered the following amendment to Senate Bill 754 S-1:

1. Amend page 16, after line 1, by inserting Section 321, amended as follows:

Sec. 321. (1) Except as otherwise provided under section 304a, a provider of a regulated telecommunication service shall not charge a rate for the service that is less than the total service long run incremental cost of providing the service.

(2) A PROVIDER MAY FILE AN APPLICATION FOR COMMISSION APPROVAL OF A SERVICE COST STUDY FOR ANY INDIVIDUAL SERVICE, NETWORK ELEMENT, INTERCONNECTION ARRANGEMENT OR ANY GROUP OR COMBINATION THEREOF AT ANY TIME AS LONG AS THERE IS NOT A PENDING APPLICATION FOR APPROVAL OF A COST STUDY FOR THE SAME INDIVIDUAL SERVICE, NETWORK ELEMENT, INTERCONNECTION ARRANGEMENT OR ANY GROUP OR COMBINATION THEREOF.

Explanation: This amendment authorizes the provider to seek commission approval of the service cost study whenever it concludes conditions warrant, as long as there is no pending application for approval of a comparable cost study. The amendment eliminates arbitrary minimum time periods between the filing of cost studies, particularly when the prior cost study may not reflect current costs.

EXHIBIT G

Rindler, Richard

From: Reidy, John J (Jay) - LGCRP [jjreidy@att.com]
Sent: Thursday, August 04, 2005 5:12 PM
To: William J. Champion III; James.Denniston@mci.com; aernst@dykema.com; akirk@talk.com; bshires@ldmi.com; Bob Stewart; Hamill, Cheryl L - LGCRP; chopkins@grid4.com; Glover, Candice L - LGCRP; Brown, Frances E (Francie) - LGCRP; craig.anderson@sbc.com; Garvin, Dayna; francie@talk.com; Gary L. Field; glfieldlaw@comcast.net; hjmessaging@loomislaw.com; HKelly@KelleyDrye.com; hrashes@clarkhill.com; JBeachnau@dykema.com; JDonovan@KelleyDrye.com; jfinefrock@earthlink.com; JMusselman@KelleyDrye.com; joseph.r.stewart@mail.sprint.com; Katherine.Mudge@covad.com; Jespersen, Kathy J; Wild, Kimberly; Kris.Shulman@xo.com; LeVasseur, Art; mark.iannuzzi@telnetww.com; Mike Ashton; Harthun, Matthew J (Matt); mstarkey@qsiconsulting.com; Collins, Paul R; Hudson, Paul; Healy, Peter; richard_wolfe@cable.comcast.com; SBinke@dykema.com; sgentz@phonelaw.com; Lichtenberg, Sherry (Sherry Lichtenberg); Sinantha, Sadachanh (Spy); susanne.m.borries@mail.sprint.com; Willard, Walter W (Walt) - NEO; kf2429@sbc.com; ca9361@sbc.com
Cc: Hamill, Cheryl L - LGCRP; Henson, James F - LGCRP; Brown, Frances E (Francie) - LGCRP
Subject: U-14447

This is to give notice that AT&T will no longer be participating in the collaborative discussions in this docket. AT&T and TCG Detroit have entered into agreements that amend their respective interconnection agreements with SBC Michigan, resolving all outstanding issues arising from the FCC's Triennial Review Order and Triennial Review Remand Order. The amendments were submitted to the Commission today (in Case U-12465) for approval as negotiated agreements.

On behalf of Cheryl Hamill, Jim Henson and Francie Brown, we thank you and wish you well in your future efforts.

Jay Reidy/AT&T

John J. Reidy, III
Senior Attorney
AT&T Corp.
222 West Adams Street, Suite 1500
Chicago, Illinois 60606
312-230-2647
832-213-0248 (fax)

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

SBC ILLINOIS COMPROMISE TRO/TRRO AMENDMENT

[all whereas and sections 1 – 8 accepted in MI]

This TRO/TRRO Amendment amends the Interconnection Agreement by and between Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC") and [NAME] ("CLEC"). SBC and CLEC are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment applies in SBC's service territory in the State of Illinois.

WHEREAS, SBC and CLEC are Parties to an Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1934, as amended [the "Act"], dated [INSERT DATE] (the "Agreement"); and

WHEREAS, the Federal Communications Commission (the "FCC") released an order on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003;

WHEREAS, on March 2, 2004, the U.S. Court of Appeals for the District of Columbia issued a decision affirming in part and vacating in part the TRO, and the affirmed portions of the TRO subsequently have become final and non-appealable;

WHEREAS, the FCC released orders on August 9, 2004 and October 18, 2004 in Docket No. 01-338, "TRO Reconsideration Orders" which subsequently became effective;

WHEREAS, the FCC released an order on February 4, 2005 in WC Docket No 04-313 and CC Docket No. 01-338, (the "Triennial Review Remand Order" or "TRO Remand"), which became effective as of March 11, 2005;

WHEREAS, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Agreement in order to give contractual effect to the effective portions of the TRO, TRO Reconsideration Order, and TRO Remand as set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows

1. The Parties agree that the Agreement should be amended by the addition of the terms and conditions set forth in the TRO/TRO Remand Attachment attached hereto.
2. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement only to the extent necessary to give

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
5. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Section 1 of this Amendment. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement." Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement. Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law", "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
6. This Amendment may require that certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in this Amendment. The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement.
7. The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Commission and shall become effective ten (10) days following approval by such Commission (the "Amendment Effective Date").
8. Reservation of Rights. Nothing contained in this Amendment shall limit either Party's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the Commission, the FCC, any court or any other governmental authority related to, concerning or that may affect either Party's obligations under the Agreement, this Amendment, any SBC tariff, or Applicable Law. Furthermore, to the extent any terms of this Amendment are imposed by arbitration, a party's act of incorporating those terms into the agreement should not be construed as a waiver of any objections to that language and each party reserves its right to later appeal, challenge, seek reconsideration of, and/or oppose such language.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2005, by Illinois Bell Telephone Company d/b/a SBC Illinois, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

CLEC

**Illinois Bell Telephone Company d/b/a SBC
Illinois by SBC Telecommunications, Inc.,
its authorized agent**

By: _____ By: _____

Name: _____ Name: _____
(Print or Type) (Print or Type)

Title: _____ Title: *For/* Senior Vice President -
(Print or Type) Industry Markets & Diversified Businesses

Date: _____ Date: _____

FACILITIES-BASED OCN # _____

ACNA _____

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

1.0 Definitions

- (a) For the purposes of the FCC's caps on DS1 and DS3 loops, the term "building" or "single building" shall mean a structure under one roof. Two or more physical structures that share a connecting wall or are in close physical proximity shall not be considered a single building solely because of a connecting tunnel or covered walkway, or a shared parking garage or parking area unless such structures have ONE street address. An educational, industrial, governmental or medical premises or campus shall constitute a single building for purposes of the DS1 and DS3 loop caps provided that all of the buildings are located on the same continuous property, which is owned and/or leased by the same customer, and are not separated by a public highway. A public highway is considered to mean a vehicular thoroughfare which is government-owned.
- (b) The term "business line" shall be defined as set forth in 47 C.F.R. 51.5, to wit: A SBC-owned switched access line used to serve a business customer, whether by SBC itself or a CLEC that leases the line from SBC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with SBC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."
- (c) A "fiber-based collocater" is defined in accordance with the FCC's TRRO, including para. 102 and 47 C.F.R. 51.5, to the extent the TRRO is effective.
- (d) Commingling

"Commingling" means the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one or more facilities or services that CLEC has obtained at wholesale from SBC, pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of a UNE, or a combination of UNEs, with one or more such wholesale facilities or services. "Commingle" means the act of commingling.
- (e) Commingling Arrangement

"Commingled Arrangement" means the arrangement created by Commingling.
- (f) Dark Fiber

Unused fiber within an existing fiber optic cable that has not been activated through optronics to render it capable of carrying communications services.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

(g) Dedicated Transport.

Shall be defined as set forth in 47 C.F.R. 51.319(e)(1)..

(h) DS1 Dedicated Transport.

Dedicated Transport having a total digital signal rate of 1.544 Mbps.

(i) DS3 Dedicated Transport.

Dedicated Transport having a total digital signal rate of 44.736 Mbps.

(j) DS1 Loop.

A digital transmission channel suitable for the transport of 1.544 Mbps digital signals that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law. A DS1 Loop includes the electronics necessary to provide the DS1 transmission rate.

(k) DS3 Loop.

A digital transmission channel suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS1 channels) that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law. A DS3 Loop includes the electronics necessary to provide the DS3 transmission rate.

(l) "Enhanced Extended Link" or "EEL"

"Enhanced Extended Link" or "EEL" means a UNE combination consisting of Section 251 UNE loop(s) and Section 251 UNE Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNEs (including, for example, with or without any needed multiplexing capabilities).

(m) Enterprise Market Local Switching

Enterprise market (DS1 and above) local switching (defined as (a) all line-side and trunkside facilities as defined in the TRO, plus the features, functions, and capabilities of the switch.

(n) Feeder Portion of Loop

The portion of a Loop (fiber or copper) between the Main Distribution Frame (MDF) or its equivalent in an SBC Central Office (CO) and a remote terminal or feeder/distribution interface.

(o) "High-Cap EELs is defined in Section 3.1.1".

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

(p) Route

For purposes of FCC Rule 51.319 (e)(1) through (e)(5), a transmission path between one of SBC's wire centers or switches and another of SBC's wire centers or switches within a LATA. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more SBC intermediate wire centers or switches (e.g., SBC wire center or switch "X"). Transmission paths between identical end points (e.g., SBC wire center or switch "A" and SBC wire center or switch "Z") are the same "route", irrespective of whether they pass through the same intermediate SBC wire centers or switches, if any.

(q) Wire Center. Defined as set forth in 47 C.F.R. 51.5.

(r) FTTH or FTTC Loop. Defined as set forth in 47 C.F.R. 51.319(a)(3).

(s) Hybrid Loop. Defined as set forth in 47 C.F.R. 51.319(a)(2).

(t) Inside Wire Subloop. Defined as set forth in 47 C.F.R. 51.319(b).

1.1 **TRO-Declassified Elements.** Pursuant to the *TRO*, nothing in the Agreement requires **SBC ILLINOIS** to provide to CLEC any of the following items as unbundled network elements under Section 251, either alone or in a Section 251 UNE combination (whether new, existing, or pre-existing) with any other element, service or functionality:

- (i) entrance facilities for any purpose; (Dedicated transport facilities that do not connect a pair of incumbent LEC wire centers, including but not limited to, the transmission facilities that connect CLEC's networks with **SBC ILLINOIS's** networks.) In accordance with Paragraph 140 of the *TRRO*, nothing in this Section 1.1 nor the FCC's finding of non-impairment with respect to entrance facilities alters CLEC's right to interconnect with SBC's network pursuant to Section 251(c)(2) of the Act for the exchange of traffic.
- (ii) OCn level and DSO dedicated transport;
- (iii) enterprise market (DS1 and above) local switching; the features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);
- (iv) OCn loops;
- (v) feeder portion of the loop;
- (vi) line sharing, except as grandfathered as provided in the *TRO*;
- (vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;
- (viii) SS7 signaling to the extent not provided in conjunction with unbundled local switching;
- (ix) packet switching, including routers and DSLAMs;

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

- (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; and
- (xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that **SBC ILLINOIS** has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case **SBC ILLINOIS** will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

1.2 TRO Remand-Declassified Elements (Mass Market Unbundled Local Switching and UNE-P).

1.2.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with "UNE-P") as an unbundled network element under Section 251. Accordingly, pursuant to Rule 51.319(d)(2)(iii), although **SBC ILLINOIS** shall continue to provide access to Mass Market ULS or Mass Market UNE-P to CLEC for CLEC to serve its embedded base of customers (i.e., only Mass Market ULS or Mass Market UNE-P ordered by CLEC before March 11, 2005), effective March 11, 2005 the price for such Mass Market ULS and UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS and UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS and UNE-P, plus one dollar. For purposes of this Paragraph, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.) CLEC shall be fully liable to **SBC ILLINOIS** to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

1.2.2 **SBC ILLINOIS** shall continue to provide access to CLEC's embedded base of Mass Market ULS Element or Mass Market UNE-P (i.e. only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC before March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, for a transitional period of time, ending upon the earlier of:

- (a) CLEC's disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;
- (b) CLEC's transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or
- (c) March 11, 2006.

SBC ILLINOIS's transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 1.2 shall be on an "as is" basis, except that CLEC may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

UNE-P, or may re-configure to permit or eliminate line splitting. Upon the earlier of the above three events occurring, as applicable, **SBC ILLINOIS** may, without further notice or liability, cease providing the Mass Market ULS Element(s) or Mass Market UNE-P.

1.2.2.1 Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P pursuant to this Amendment, and subject to this Section 1.2, and subject to the conditions set forth in Section 1.2.1.3.1.1 below, **SBC ILLINOIS** shall also continue to provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, and only to the extent such items were already being provided before March 11, 2005, in conjunction with the embedded base Mass Market ULS or Mass Market UNE-P.

1.2.2.1.1 The Agreement must contain the appropriate related terms and conditions, including pricing; and the features must be "loaded" and "activated" in the switch.

1.2.2.2 To the extent already permitted by the Agreement, CLEC shall be entitled to initiate feature change orders, record orders, and disconnect orders on embedded base Mass Market UNE-P/ULS, as well as orders to reconfigure embedded base Mass Market UNE-Ps to a UNE line splitting arrangement to serve the same end user and vice versa.

- 1.2.3 CLEC will complete the transition of its embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (i.e. by March 11, 2006).
- 1.2.4 Paragraphs 1.2.1 through 1.2.3, above, apply and are operative with respect to SBC's unbundling obligations under Section 251 regardless of whether CLEC is requesting Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.
- 1.2.5 To the extent that there is CLEC embedded based Mass Market ULS or UNE-P in place on or after March 11, 2006, SBC without further notice or liability, will reprice such arrangements to market based rates. In addition, any performance measures and remedies in the Agreement will not apply on or after March 11, 2006.

1.3 TRO Remand Declassified Elements (High-capacity Loop and Transport).

- 1.3.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new high-capacity loop and dedicated transport elements unbundled under Section 251, either alone or in a Section 251 combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Element(s)."

1.3.2 **SBC ILLINOIS's** wire centers in Illinois shall be classified as either Tier 1, Tier 2 or Tier 3 as follows:

- (A) Tier 1 wire centers are those SBC wire centers that contain at least four fiber-based collocators, at least 38,000 business line, or both. Tier 1 wire centers also are those SBC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLECs. Once a wire center is determined to be a Tier 1 Wire Center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.
- (B) Tier 2 wire centers are those SBC wire centers that are not Tier 1 wire centers, but contain at least three fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.
- (C) Tier 3 wire centers are those SBC wire centers that do not meet the criteria for Tier 1 and Tier 2 wire centers.
- (D) For purposes of determining Tier 1 and Tier 2 Wire Centers, Business Line tallies shall be calculated pursuant to the FCC's TRRO, including paragraph 105 and 47 C.F.R. 51.5.
- (E) SBC will designate Tier 1 and Tier 2 wire centers, as well as wire centers where thresholds are met relative to DS1 and DS3 Loops, in a posting to CLEC Online. SBC may update the posted list as follows (and will advise CLECs of such posting via Accessible Letter):
 - (a) for updates based upon collocation and UNE data, no more frequently than quarterly; or
 - (b) for updates based upon business line data, no more frequently than once a year, following the filing of the relevant statewide ARMIS data with the FCC.
- (F) If the number of fiber-based collocators and/or number of business access lines served rises in any **SBC ILLINOIS** wire center such that the classification of that wire center as Tier 1, 2 or 3 would change, **SBC ILLINOIS** shall file an informational notice with the Illinois Commission and shall provide notice to all CLECs in an Accessible Letter, identifying the wire center affected and the reason for the classification change, e.g., the presence of an additional fiber-based collocator. Such notices will be filed no more often than annually.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

1.3.3 Intentionally left blank.

1.3.4 Accordingly, pursuant to Rules 51.319(a) and (e), although **SBC ILLINOIS** shall continue to provide CLEC's embedded base of the Affected Element(s) (i.e., only Affected Elements ordered by CLEC before March 11, 2005), if and as provided by the Agreement, effective March 11, 2005 the price for the embedded base Affected Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Element(s) as of June 15, 2004 plus 15% or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), *plus 15%*. CLEC shall be fully liable to **SBC ILLINOIS** to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

1.3.5 CLEC shall have until March 12, 2006, to complete the transition of its embedded base of the Affected DS1 and DS3 Loop/Transport Elements. CLEC may transition from these Affected Declassified DS1 and DS3 loop/transport Elements to other wholesale facilities, including (i) special access, (iii) wholesale facilities obtained from other carriers or (iv) self-provisioned facilities. For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to **SBC ILLINOIS** by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements (September 11, 2006).

1.3.5.1 If CLEC has not submitted an LSR or ASR, as applicable, to SBC requesting conversion of the Affected DS1 and DS3 Loop/Transport Elements to another wholesale service, then on March 11, 2006, SBC, at its option, shall (a) disconnect such loop(s)/transport, (b) re-price such loops/transport to an analogous access price, or (c) shall convert the such loop(s)/transport to an analogous access service, if available. Nothing in this Section prohibits the parties from agreeing upon another service arrangement within the requisite transition timeframe (e.g., via a separate agreement at market-based rates or resale). Conversion of loops/transport shall be performed in a manner that reasonably minimizes the disruption or degradation to CLEC's customer's service, and all applicable charges shall apply. As of the date of conversion of such DS1 and/or DS3 loops/transport, any services or products provided by SBC in conjunction with such Loops/Transport (e.g. Cross-Connects) shall be billed at applicable wholesale rates (i.e. if conversion is to an access product, they will be charged at applicable access rates). Cross-connects obtained under SBC's physical collocation tariff shall not be repriced to access rates.

1.3.5.2 In order to facilitate the timely transition of Affected Elements, upon CLEC request, the parties shall meet and confer, no later than October 1, 2005, regarding the development of a project approach to disconnection and/or conversion, as applicable.

1.4 Limits and restrictions on DS1 and DS3 loops, DS1 and DS3 transport and dark fiber transport.

1.4.1 Intentionally left blank.

1.4.2 DS1 and DS3 Loops

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

1.4.2.1 To the extent required by the Agreement, SBC shall provide CLEC DS1 loops to any building that is not served by an SBC wire center with at least 60,000 business lines and at least four-fiber based collocators, except that CLEC shall not be entitled to obtain more than 10 DS1 loops to a single building. Once a wire center exceeds these thresholds, no future DS1 Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS1 Loops in that wire center, or any buildings served by that wire center, shall be Declassified and no longer available as UNEs under the Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Loops in such wire center(s), or any buildings served by such wire center(s).

1.4.2.2 To the extent required by the Agreement SBC shall provide CLEC DS3 loops to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators, except that CLEC shall not be entitled to obtain more than one DS3 loop to a single building. Once a wire center exceeds these thresholds, no future DS3 Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS3 Loops in that wire center, or any buildings served by that wire center, shall be Declassified, and no longer available as UNEs under the Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).

1.4.2.3 CLEC shall undertake a reasonably diligent inquiry to determine whether an order for a DS1 or DS3 loop intended to be used to serve a new customer (not part of CLEC's embedded base) satisfies the availability criteria set forth in Section 1.4.2.1 and 1.4.2.2 above prior to submitting its order to SBC. CLEC shall self-certify, if its order is to be placed for a DS1 or DS3 loop to any building served by a wire center that SBC has designated as meeting the criteria set forth in Rule 51.319(a)(4) or 51.319(a)(5), as applicable, that based on that reasonable inquiry it is CLEC's reasonable belief that its order satisfies the criteria in those Sections. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, SBC shall provision the requested DS1 or DS3 loop in accordance with CLEC's order and within SBC's standard ordering interval applicable to such loops and, if it desires to do so, dispute the self-certification and associated orders pursuant to Section 1.4.2.4, below.

1.4.2.4 Disputes regarding CLEC's compliance with Section 1.4.2.3 shall be addressed through the dispute resolution process set out in this Agreement. If the Parties determine through informal dispute resolution or if formal dispute resolution through arbitration at the state Commission or otherwise determines that CLEC was not entitled to the provisioned DS1 or DS3 loop under Section 251, the rates paid by CLEC for the affected loop shall be subject to true-up to an equivalent special access rate as of the date billing began for the provisioned element, and CLEC shall be required to disconnect or to transition from the Section 251 UNE DS1 or DS3 loop to another wholesale service within 30 days of the determination. If CLEC does not disconnect or transition the loop within the 30 day period, then SBC may disconnect the loop. Conversion of DS1 and DS3 loops shall be performed in a manner reasonably designed to minimize the disruption or degradation to CLEC's customer's service.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

1.4.2.4.1 In the event of a dispute under Section 1.4.2.4 following CLEC's self-certification, upon reasonable request by the Commission or CLEC, SBC will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, data supporting its classification of wire centers as Tier 1 or Tier 2 only to the extent necessary to justify the classification. CLEC may elect to self-certify using a written or electronic notification sent to **SBC ILLINOIS**, so long as the self-certification complies with the FCC's TRRO, para. 234, and is in substantial compliance with SBC's requested format, as set forth in CLECALL-05-039, issued March 11, 2005. CLEC must remain in compliance with its self-certification for so long as CLEC continues to receive the aforementioned facilities and/or services from **SBC ILLINOIS**.

1.4.3 Dark Fiber Transport.

1.4.3.1 SBC will provide dark fiber transport under Section 251 to the extent required by the Agreement, except where both wire centers defining the route are either Tier 1 or Tier 2 wire centers (i.e. dark fiber transport is only available, to the extent required by the Agreement and only if a wire center on either end of the requested route is a Tier 3 Wire Center.

1.4.3.2 CLEC shall undertake a reasonably diligent inquiry to determine whether an order for a Dark Fiber transport circuit satisfies the availability criteria set forth in Sections 1.4.3.1 above prior to submitting its order to SBC. CLEC shall self-certify, if its order is to be placed for a Dark Fiber transport circuit on a route involving wire centers that SBC has designated as meeting the Tier 1 or Tier 2 criteria, that based on that reasonable inquiry it is CLEC's reasonable belief that its order satisfies these criteria. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement SBC shall provision the requested Dark Fiber transport circuit in accordance with CLEC's order and within SBC's standard ordering interval applicable to such circuits and, if it desires to do so, dispute the self-certification and associated orders pursuant to Section 1.4.3.3, below.

1.4.3.3 Disputes regarding CLEC's compliance with Section 1.4.3.2 shall be addressed through the dispute resolution process set out in this Agreement. If the Parties determine through informal dispute resolution or if formal dispute resolution through arbitration at the state Commission or otherwise determines that CLEC was not entitled to the provisioned Dark Fiber transport circuit under Section 251, the circuit shall be disconnected and returned to SBC within 30 days of the determination. If CLEC does not disconnect the transport circuit, remove its services, and return it to SBC within the 30-day period, then SBC may disconnect and reclaim the transport circuit.

1.4.3.3.1 In the event of a dispute under 1.4.3.3 following CLEC's self-certification, upon reasonable request by the Commission or CLEC, SBC will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, data supporting its classification of wire centers as Tier 1 or Tier 2 only to the extent necessary to justify the classification. CLEC may elect to self-certify using a written or electronic notification sent to **SBC ILLINOIS**, so long as the self-certification complies with the FCC's TRRO, para. 234, and is in substantial compliance with SBC's requested format, as set forth in CLECALL-05-039, issued March 11, 2005. CLEC must remain in compliance with its self-certification for so long as CLEC continues to receive the aforementioned facilities and/or services from **SBC ILLINOIS**.

1.4.4 DS1 and DS3 Dedicated Transport.

1.4.4.1 To the extent required by the Agreement, SBC will provide DS1 Dedicated Transport unbundled under Section 251 on all routes between SBC wire centers that are classified as Tier 2 and Tier 3 on one or both ends of the route (i.e., only if a wire center at either end of a requested route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center. CLEC may obtain a maximum of 10 DS1 Dedicated Transport circuits on each route for which SBC is required to provide DS1 Dedicated Transport under Section 251, and shall not request more than that maximum.

1.4.4.2 To the extent required by the Agreement, SBC will provide DS3 Dedicated Transport unbundled under Section 251 on all routes between SBC wire centers that are classified as Tier 3 on one or both ends of the route. CLEC may obtain a maximum of 12 unbundled DS3 Dedicated Transport circuits on each route for which SBC is required to provide DS3 Dedicated Transport under Section 251, and shall not request more than that maximum.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

1.4.4.3 CLEC shall undertake a reasonably diligent inquiry to determine whether an order for a DS1 or DS3 transport circuit satisfies the availability criteria set forth in Sections 1.4.4.1 and 1.4.4.2 above prior to submitting its order to SBC. CLEC shall self-certify, if its order is to be placed for a DS1 or DS3 transport circuit on a route involving a wire center that SBC has designated as meeting the Tier 1 or Tier 2 criteria, that based on that reasonable inquiry it is CLEC's reasonable belief that its order satisfies these criteria. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement SBC shall provision the requested DS1 or DS3 transport circuit in accordance with CLEC's order and within SBC's standard ordering interval applicable to such circuits and, if it desires to do so, dispute the self-certification and associated orders pursuant to Section 1.4.4.3.1, below.

1.4.4.3.1 In the event of a dispute under 1.4.4.3 following CLEC's self-certification, upon reasonable request by the Commission or CLEC, SBC will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, data supporting its classification of wire centers as Tier 1 or Tier 2 only to the extent necessary to justify the classification. CLEC may elect to self-certify using a written or electronic notification sent to **SBC ILLINOIS**, so long as the self-certification complies with the FCC's TRRO, para. 234, and is in substantial compliance with SBC's requested format, as set forth in CLECALL-05-039, issued March 11, 2005. CLEC must remain in compliance with its self-certification for so long as CLEC continues to receive the aforementioned facilities and/or services from **SBC ILLINOIS**.

1.5. Transition for existing Section 251 unbundled DS1 and DS3 Transport, and Dark Fiber. CLEC will complete the transition of embedded base Affected Elements to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (12 or 18 months from the TRO Remand Order's effective date, as applicable). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to **SBC ILLINOIS** by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

- 1.5.1 For any DS1 and DS3 Dedicated Transport that CLEC had in place as of March 11, 2005, and which SBC no longer is required to provide on an unbundled basis under Section 251, CLEC must transition from those transport circuits to other wholesale facilities, including special access, transport provided by other carriers, or self-provisioned facilities. SBC will make available, as updated from time to time, its list of wire centers that meet the criteria set forth in Sections 1.4.1.2(A) and (B). SBC shall continue to provide any embedded base unbundled DS1 and DS3 transport circuits until the earlier of CLEC's completion of the transition or March 10, 2006. After March 10, 2006, if CLEC has not submitted an LSR or ASR, as applicable, to SBC requesting conversion of the Affected Element DS1 and DS3 transport circuit(s) to another wholesale service, SBC at its option, shall (a) disconnect such loop(s), (b) re-price such loops to an analogous access price, or (c) shall convert the Declassified transport circuit(s) to an analogous access service, if available. Nothing in this Section prohibits the parties from agreeing upon another, service arrangement within the requisite transition timeframe (e.g., via a separate agreement at market-based rates or resale); Conversion of dedicated transport circuits shall be performed in a manner reasonably designed to minimize the disruption or degradation to CLEC's customer's service, and at no charge to CLEC.
- 1.5.2 Products provided by SBC in conjunction with DS1 and DS3 Unbundled Dedicated Transport (e.g. Cross-Connects) shall also be subject to re-pricing under this Section 1.5 where UDT is Declassified. Cross-Connects obtained under SBC's physical collocation tariff shall not be repriced to access rates.
- 1.5.3 Paragraphs 1.3.1 through 1.3.2, 1.4.1 through 1.4.4, and 1.5.1. through 1.5.2, above, apply and are operative regardless of whether CLEC is requesting the Affected Element(s) under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

2.1 Commingling and Commingled Arrangements.

[section re-numbering to be cared for later]

- 2.2 Where processes, including ordering and provisioning processes, for any Commingling or Commingled Arrangement available under this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC will develop and implement processes, subject to any associated rates, terms and conditions. SBC shall use existing ordering and provisioning processes already developed for other UNEs, if possible; if doing so is not possible, SBC shall promptly determine what new processes are necessary. The Parties will comply with any applicable Change Management guidelines or BFR guidelines as applicable.
- 2.3 Except as prohibited or restricted in Section(s) 1.1, 1.3, 1.4, 1.5, 2.1-2.10; 3.0-3.3; 11.0, and 11.1, in this Amendment and, further subject to the other provisions of the Agreement, SBC shall permit CLEC to Commingle a Section 251 UNE or a combination of Section 251

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

UNEs with facilities or services obtained at wholesale from SBC to the extent required by FCC rules and orders.

- 2.4 Upon request, and subject to other applicable provisions of this Amendment, SBC shall perform the functions necessary to Commingle a Section 251 UNE or a combination of Section 251 UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC (as well as requests where CLEC also wants SBC to complete the actual Commingling), except that SBC shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) it is not technically feasible, including that network reliability and security would be impaired; or (ii) SBC's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iii) it would undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC's network. Subject to the terms and conditions of the Agreement and this Amendment, CLEC may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services obtained from SBC, and SBC shall not deny access to Section 251 UNEs and combinations of Section 251 UNEs on the grounds that such facilities or services are somehow connected, combined or otherwise attached to wholesale services obtained from SBC.
- 2.5 The Commingled Product Set identified below [SBC WILL PROVIDE LIST FOR INCLUSION] shall be available to CLEC upon request as of the effective date of this Amendment. SBC shall develop a list of additional Commingled Arrangements that will be available for ordering as of the earlier of the date on which the list is added to the CLEC Handbook or posted on "CLEC On-line" ("Commingled Product Set"). SBC may add to the list at any time; **[Source - CLEC Online]**
1. UNE DS0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux
 2. UNE DS1 Loop connected to a non-channelized Special Access DS1 Interoffice Facility*#
 3. UNE DS1 Loop connected to a channelized Special Access DS3 Interoffice Facility, via a special access 3/1 mux#
 4. UNE DS3 Loop connected to a non-channelized Special Access DS3 Interoffice Facility*#
 5. UNE DS3 Loop connected to a non-concatenated Special Access Higher Capacity Interoffice Facility (e.g., SONET Service)#
 6. UNE DS1 Dedicated Transport connected to a channelized Special Access DS3 channel termination#
 7. UNE DS3 Dedicated Transport connected to a non-channelized Special Access DS3 channel termination*#
 8. UNE DS3 Dedicated Transport connected to a non-concatenated Special Access Higher Capacity channel termination (i.e., SONET Service)#
 9. Special Access DS0 channel termination connected to channelized UNE DS1 Dedicated Transport, via a 1/0 UNE mux

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

10. Special Access DS1 channel termination connected to non-channelized UNE DS1 Dedicated Transport*#
11. Special Access DS1 channel termination connected to channelized UNE DS3 Dedicated Transport, via a 3/1 UNE mux#

*** Indicates testing is still in progress. Availability is subject to successful completion of testing.**

Indicates that FCC's mandatory eligibility criteria of 47 C.F.R. § 51.318(b) applies, including the collocation requirement.

- 2.6 Any CLEC request for a Commingled Arrangement not found on the then-existing Commingling Product Set list of orderable Commingled Arrangements, must be submitted via the bona fide request (BFR) process. In any such BFR, CLEC must designate among other things the UNE(s), combination of UNEs, and the facilities or services that CLEC has obtained at wholesale from SBC or another ILEC sought to be Commingled and the needed location(s), the order in which such UNEs, such combinations of UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them. SBC shall implement CLEC's request for Commingling or Commingled Arrangement in a manner that minimizes disruption to CLEC's customer's service.
- 2.7 SBC shall charge CLEC the non-recurring and recurring rates applicable to the Section 251 UNE(s), facilities or services that CLEC has obtained at wholesale from SBC. If any Commingling requested by CLEC requires physical work to be performed by SBC, and if an existing charge applies to that work, SBC shall so inform CLEC and, in such instance, SBC shall charge CLEC. A fee shall be calculated using the Time and Material charges as reflected in Appendix Pricing.
 - 2.7.1 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by SBC under this Section 2.1 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which CLEC requests SBC to perform work not required by this Section 2.1, CLEC shall be charged a market-based rate for any such work.
- 2.8 SBC shall not be required to, and shall not, provide "ratcheting" as a result of Commingling or a Commingled Arrangement., as that term is used in the FCC's Triennial Review Order. As a general matter, "ratcheting" is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate. Commingling will not affect the rates, terms or conditions under which special access services are ordered and billed.. SBC shall charge the rates for UNEs (or UNE combinations) Commingled with facilities or services obtained at wholesale

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

(including for example special access services) on an element-by-element basis and such facilities and services on a facility-by-facility, service-by-service basis.

2.9 Nothing in this Amendment shall impose any obligation on SBC to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit CLEC to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, including the rules and orders of the FCC, or by the Illinois Commission or court decision. The preceding includes without limitation that SBC shall not be obligated to Commingle network elements that do not constitute UNEs under Section 251(c)(3) of the Act (e.g. SBC is not obligated to Commingle or permit Commingling of elements that are "TRO-Declassified or TRO Remand-Declassified Elements" under this Amendment), or where UNEs are not requested for permissible purposes. Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an **SBC ILLINOIS** offering pursuant to 47 U.S.C. § 271 that is not a UNE under 47 U.S.C. § 251(c)(3).

If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.

2.10 Where a Commingled Arrangement to be provided to CLEC involves a Section 251 UNE combination as well as Commingling, the eligibility criteria applicable, if any exist, to both Commingling and combinations must be fulfilled.

3.0 EELs Eligibility Requirements.

3.1 Notwithstanding anything in the Agreement to the contrary SBC agrees to make available to CLEC "EELs" and "High-Cap EELs" (as each is defined herein) on the terms and conditions set forth below. SBC shall not impose any additional conditions or limitations upon obtaining access to EELs or High-Cap EELs, other than those set out in the TRO, the TRRO, and in the Agreement. Except as provided below in this Section 3 and subject to this Section 3, SBC shall provide access to Section 251 UNEs and combinations of Section 251 UNEs without regard to whether CLEC seeks access to the UNEs to establish a new circuit or to convert an existing circuit from a service to UNEs, to the extent the Agreement contains terms and conditions related to such conversions.

3.1.1 An EEL that consists of a combination of voice grade to DS0 level UNE local loops combined with a UNE DS1 or DS3 Dedicated Transport (a "Low-Capacity EEL") shall not be required to satisfy the Eligibility Requirements set out in this Section 3.2.1 through 3.2.3. If an EEL is made up of a combination that includes one or more of the following described combinations (referred to herein as "High-Cap EELs", notwithstanding the 1.0(l) definition of EEL), each circuit to be provided to each customer is required to terminate in a collocation arrangement that meets the requirements of Section 3.2.4 below (e.g., the end of the UNE dedicated transport/transport facility or service that is opposite the end connected to the UNE loop/channel termination must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect). A High-Cap EEL is either:

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

- (A) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport or dedicated DS3 or higher transport facility or service, or to an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service; or
 - (B) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 or higher channel termination service.
- 3.2 SBC shall make Low Capacity EELs available to CLEC without restriction, except as otherwise provided in the Agreement including this Amendment. SBC shall provide access to the High-Cap EEL (Sections 3.2.3(A) and 3.2.3(B)) only when CLEC satisfies all of the following conditions (sometimes referred to herein as "service eligibility requirements," "mandatory eligibility criteria," or "conditions") set forth in Section 3.2.1 through 3.2.3 for each High-Cap EEL requested.
- 3.2.1. CLEC (directly and not via an affiliate) has received state certification (or equivalent regulatory approval, as applicable) from the Commission to provide local voice service in the area being served.
- 3.2.2 The following criteria must be satisfied for each High-Capacity EEL described in Sections 3.2.3(A) and 3.2.3(B), including each DS1 circuit, each DS1 High-Cap EEL, and each DS1-equivalent circuit on a DS3 High-Cap EEL:
- (A) Each circuit to be provided to each end user customer will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an SBC local service area and within the LATA where the circuit is located ("Local Telephone Number"), prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification), including to each DS1 circuit and to each DS1 equivalent circuit of a DS3 EEL;
 - (B) Each DS1-equivalent circuit on a DS3 EEL or on any other High-Cap EEL must have its own Local Telephone Number assignment, so that each fully utilized DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
 - (C) In addition, each DS1 or DS1 equivalent will have 911 or E911 capability prior to the provision of service over that circuit; CLEC may, at CLEC's option, may order and have provisioned as set forth in Section 3.2.5, below.
 - (D) Collocation: Each circuit(s) to be provided to each end user customer will terminate in a collocation arrangement meeting the requirements of Section 3.2.3, below.; and
 - (E) Each circuit to be provided to each end user customer will be served by an interconnection trunk that meets the requirements of Section 3.2.4 of this Attachment; and

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

- (F) For each 24 DS1 EELs or the other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 3.2.5 of this Attachment. CLEC is not required to associate the individual EEL collocation termination point with a local interconnection trunk in the same wire center.
- (G) Switching: Each circuit to be provided to each end user customer will be served by switching equipment that is a switch capable of switching local voice traffic.

By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, SBC shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not terminate to a collocation arrangement that meets the requirements of Section 3.2.3. The criteria set forth in this Section 3 shall apply in any arrangement that includes more than one of the UNEs, facilities, or services set forth in Section 3.1.1, including, without limitation, to any arrangement where one or more UNEs, facilities, or services not set forth in Section 3.1.1 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.

3.2.3 A collocation arrangement meets the requirements of this Section 3 if it is:

- (A) Established pursuant to Section 251(c)(6) of the Act and located at SBC's premises within the same LATA as the customer's premises, when SBC is not the collocator; or
- (B) Located at a third party's premises within the same LATA as the CLEC's premises, when SBC is the collocator.

3.2.4 An interconnection trunk meets the requirements of Sections 3.2.2(E) and 3.2.2(F) of this Attachment if CLEC will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk and the trunk is located in the same LATA as the customer premises served by the High-Cap EEL.

3.2.5 For a new circuit to which Section 3.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 3.2.2(B) and Section 3.2.2(C), respectively. In such case, CLEC shall satisfy Section 3.2.2(B) and/or Section 3.2.2(C) if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC provisions such new circuit. CLEC must provide SBC with

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.

- 3.2.5.1 Section 3.2.5 does not apply to existing circuits to which Section 3.1.1 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 3.2.2(B) and (C) requirements for existing circuits at the time it initiates the ordering process).
- 3.2.6 Before accessing (1) a converted High-Cap EEL, if the Agreement contains terms and conditions related to such conversions, (2) a new High-Cap EEL, or (3) part of a High-Cap EEL that is a Commingled EEL as a UNE, CLEC must certify to all of the requirements set out in Section 3.2 for each circuit. For each ASR, CLEC may provide this certification by following the process outlined for this purpose on CLEC Online. In addition, CLEC may provide written notification to SBC from time to time, or will provide in response to SBC request made no more often than once each calendar year, certifying that its circuits satisfy all of the requirements of Section 3.
- 3.2.7 In addition to any other audit rights provided for in this Agreement and those allowed by law, SBC may obtain and pay for an independent auditor to audit, on an annual basis CLEC's compliance in Illinois with the conditions set out in Section 3. For purposes of calculating and applying an "annual basis", it means a consecutive 12-month period, beginning upon SBC's written notice that an audit will be performed for Illinois, subject to Section 3.2.8.4 of this Section.
 - 3.2.7.1 To invoke its limited right to audit, SBC will send a Notice of Audit to CLEC, identifying examples of particular circuits for which SBC alleges non-compliance and the reason for the audit. The Notice of Audit shall also include supporting documentation upon which SBC establishes the cause that forms the basis of its belief that CLEC is non-compliant. Such Notice of Audit will be delivered to CLEC with supporting documentation no less than thirty (30) calendar days prior to the date upon which SBC seek to commence an audit.
 - 3.2.7.2 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion that includes the auditor's determination regarding CLEC's compliance with the qualifying service eligibility criteria. The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 3.
 - 3.2.7.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.
 - 3.2.7.4. Should the independent auditor's report conclude that CLEC failed to comply in all material respects with Section 3, CLEC must true-up any difference in payments paid to SBC and the rates and charges CLEC would have owed SBC beginning from the date that the non-

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

compliant circuit was established as a High-Cap EEL, in whole or in part (notwithstanding any other provision hereof), but no earlier than the date on which this Section 3 of this Attachment is effective. CLEC shall submit orders to SBC to either convert all noncompliant circuits to the an equivalent or substantially similar wholesale service or disconnect non-compliant circuits. Conversion and disconnect orders shall be submitted within 30 days of the date on which CLEC receives a copy of the auditor's report and CLEC shall begin paying the trued-up and correct rates and charges for each converted circuit beginning with the next billing cycle following SBC' acceptance of such order, unless CLEC disputes the auditor's finding and initiates a proceeding at the Illinois Commission for resolution of the dispute, in which case no changes shall be made until the Commission rules on the dispute; however CLEC shall pay the disputed amount into an escrow account acceptable to SBC, pending resolution. With respect to any noncompliant circuit for which CLEC fails to submit a conversion or disconnect order or dispute the auditor's finding within such 30-day time period, SBC may initiate and effect such a conversion on its own without any further consent by CLEC. If converted, CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services. Reasonable steps will be taken to avoid disruption to CLEC's customer's service or degradation in service quality in the case of conversion. Following conversion, CLEC shall make the correct payments on a going-forward basis in addition to paying trued-up and correct rates and charges, as provided by this section. In no event shall rates set under Section 252(d)(1) apply for the use of any UNE for any period in which CLEC does not meet the Service Eligibility Requirements conditions set forth in this Section 3 for that UNE, arrangement, or circuit, as the case may be. Furthermore, if CLEC disputes the auditor's finding and initiates a proceeding at the Illinois Commission and if the Commission upholds the auditor's finding, escrowed amounts shall be released to SBC immediately, and CLEC shall be responsible for deficiencies, if any, between the escrow amount and the amount due SBC.

- 3.2.7.5 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with the Service Eligibility Requirements, CLEC shall reimburse SBC for the actual cost of the independent auditor's work performed in auditing CLEC's compliance with the Service Eligibility Requirements and for SBC's necessary and reasonable internal costs incurred conducting the audit in the same manner and using the same methodology and rates that SBC is required to pay CLEC's costs under Section 3.2.7.6.
- 3.2.7.6 To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Requirements, SBC shall reimburse CLEC for its necessary and reasonable staff time and other internal reasonable staff time and other reasonable costs associated with responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc).
- 3.2.7.7 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, local telephone number assignment documentation, and switch assignment documentation. CLEC will maintain this documentation for so long as the Agreement is operative, plus a period of two years.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

- 3.2.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 3 in all cases and, further, the failure of SBC to require such compliance, including if SBC provides a circuit(s), an EEL(s), High-Cap EEL, or a Commingled circuit EEL(s) that does not meet any eligibility criteria including those in this Section 3, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
- 3.3 Provisioning for EELs
- 3.3.1 With respect to an EEL and a High-Cap EEL, CLEC will be responsible for all Channel Facility Assignment (CFA). The CFA are the assignments CLEC provides to SBC ILLINOIS from CLEC's collocation arrangement.
- 3.3.2 **SBC ILLINOIS** will perform all maintenance functions on EELs and High-Cap EELs during a mutually agreeable timeframe to test and make adjustments appropriate for maintaining the UNEs in satisfactory operating condition. No credit will be allowed for any interruptions involved during such testing and adjustments.
- 3.3.3 EELs and High-Cap EELs may utilize multiplexing capabilities. .
- 4.1 Availability of HFPL for Purposes of Line Sharing.
- 4.1.1 SBC shall make available to CLEC (or its proper successor or assign pursuant to the terms of the Agreement) line sharing over the HFPL in accordance with the FCC's *Triennial Review Order* and associated lawful and effective implementing rules, 47 C.F.R. §51.319(a)(1)(i)-(iv) and (b)(1):
- 4.1.1.1 Grandfathered and New End-Users: SBC will continue to provide access to the HFPL, where: (i) prior to October 2, 2003, CLEC began providing DSL service to a particular end-user customer and has not ceased providing DSL service to that customer ("Grandfathered End-Users"); and/or (ii) CLEC began providing xDSL service to a particular end-user customer on or after October 2, 2003, and on or before the close of business December 3, 2004 ("New End-Users"). Such access to the HFPL shall be provided at the same monthly recurring rate that SBC charged prior to October 2, 2003 and shall continue for Grandfathered End-Users until the earlier of: (1) CLEC's xDSL-base service to the end-user customer is disconnected for whatever reason, or (2) the FCC issues its Order in its Biennial Review Proceeding or any other relevant government action which modifies the FCC's HFPL grandfather clause established in its Triennial Review Order and as to New End-Users, the earlier of: (1) and (2) immediately above; or (3) October 2, 2006. Beginning October 2, 2006, SBC shall have no obligation to continue to provide the HFPL for CLEC to provide xDSL-based service to any New End-Users that CLEC began providing xDSL-based service to over the HFPL on or after October 2, 2003 and before December 3, 2004. Rather, effective October 2, 2006, CLEC must provide xDSL-based service to any such

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

new end-user customer(s) via a line splitting arrangement, over a stand-alone xDSL Loop purchased from SBC, or through an alternate arrangement, if any, that the Parties may negotiate. Any references to the HFPL being made available as an unbundled network element or "UNE" are hereby deleted from the underlying Agreement.

- 5.0 TRANSITION PROCEDURE FOR DS1/DS3/DARK FIBER ELEMENTS THAT ARE DECLASSIFIED DURING THE TERM OF THE AGREEMENT, AS AMENDED
- 5.1 The procedure set forth in this Section 5.0 applies where declassification of DS1/DS3 Loops or Transport or Dark Fiber Transport occurs because wire centers/routes meet the criteria set forth in the FCC's TRO Remand Order after March 11, 2005.
- 5.2 To the extent one or more DS1/DS3 Loops, DS1/DS3 Transport or Dark Fiber Transport requested by CLEC under the Agreement, as amended, later become unavailable as a UNE because wire centers/routes are designated by **SBC ILLINOIS** as meeting the Tier 1 or Tier 2 criteria set forth in the FCC's TRO Remand Order ("Wire Center Declassification") after March 11, 2005, CLEC is no longer able to obtain such element(s) as UNE(s) under the Agreement, as amended, and CLEC shall cease ordering such element(s) under the Agreement, as amended, whether previously provided alone or in combination with or as part of any other arrangement with other UNEs or other elements or services. Accordingly, in the event one or more such elements described as UNEs become unavailable as UNEs by virtue of Wire Center Declassification after March 11, 2005, **SBC ILLINOIS** will provide written notice to CLEC of the Wire Center Declassification of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as having been Wire Center Declassified in the **SBC ILLINOIS** notice letter referenced in this Section. **SBC ILLINOIS** reserves the right to audit CLEC orders transmitted to **SBC ILLINOIS** and to the extent that CLEC or **SBC ILLINOIS** has processed orders and such orders are provisioned after the Applicable Transitional Period, such elements are still subject to this Section, including the options set forth in (a) and (b) below, and **SBC ILLINOIS**'s rights of discontinuance or conversion in the event the options are not accomplished. Where such element(s) are currently being provided to CLEC by **SBC ILLINOIS**, during a transitional period from the date of such notice, as defined in Section 5.2.1, below ("Applicable Transitional Period"), **SBC ILLINOIS** agrees to continue providing such element(s) under the terms of the Agreement, as amended. During such Applicable Transitional Period, the following options are available to CLEC with regard to the element(s) identified in the **SBC ILLINOIS** notice, including the combination or other arrangement in which the element(s) were previously provided:
- (a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or
 - (b) **SBC ILLINOIS** and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

agree that an analogous access product or service may be substituted, if available.

5.2.1 The Applicable Transitional Period shall be calculated as follows:

5.2.1.1 For DS1/DS3 Loops and Transport: If **SBC ILLINOIS**'s notice is dated before March 11, 2006, the Applicable Transitional Period shall be the longer of 30 days, or the number of days between the date of the notice and March 11, 2006. For example, if **SBC ILLINOIS**'s notice is dated March 1, 2006, the Applicable Transitional Period will be 30 days from March 1, 2006. If **SBC ILLINOIS**'s notice is dated October 1, 2005, the Applicable Transitional Period will end March 11, 2006.

5.2.1.2 For Dark Fiber Transport: If **SBC ILLINOIS**'s notice is dated before September 11, 2006, the Applicable Transitional Period shall be the longer of 30 days, or the number of days between the date of the notice and September 11, 2006. For example, if **SBC ILLINOIS**'s notice is dated September 1, 2006, the Applicable Transitional Period will be 30 days from September 1, 2006. If **SBC ILLINOIS**'s notice is dated October 1, 2005, the Applicable Transitional Period will end September 11, 2006.

5.3 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the Applicable Transitional Period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a) above, and if CLEC and **SBC ILLINOIS** have failed to reach agreement, under (b) above, as to a substitute service arrangement or element, then **SBC ILLINOIS** may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.

[Replaced section Routine Network Modifications – see below]

6.1 Routine Network Modifications - – Lawful UNE Local Loops

6.1 Routine Network Modifications – UNE Local Loops

6.1.1 **SBC ILLINOIS** shall make routine network modifications to UNE Local Loop facilities used by requesting telecommunications carriers where the requested UNE Local Loop facility has already been constructed. **SBC ILLINOIS** shall perform routine network modifications to UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

- 6.1.2 A routine network modification is an activity that **SBC ILLINOIS** regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loops for its own customers, under the same conditions and in the same manner that **SBC ILLINOIS** does for its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings.
- 6.1.3 Routine network modifications do not include constructing new loops; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes, or conduits; installing new terminals; or **removing or reconfiguring packetized transmission facility**. **SBC ILLINOIS** is not obligated to perform those activities for a requesting telecommunications carrier.
- 6.1.4 **SBC ILLINOIS** shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to **SBC ILLINOIS's** own customers.
- 6.1.5 This Agreement does not require **SBC ILLINOIS** to deploy time division multiplexing-based features, functions and capabilities with any copper or fiber packetized transmission facility to the extent **SBC ILLINOIS** has not already done so; to remove or reconfigure packet switching equipment or equipment used to provision a packetized transmission path; to reconfigure a copper or fiber packetized transmission facility to provide time division multiplexing-based features, functions and capabilities; to deploy TDM voice grade transmission capacity into new or existing networks that never had TDM capability; nor does this Agreement prohibit **SBC ILLINOIS** from upgrading a customer from a TDM-based service to a packet switched or packet transmission service, or removing copper loops or subloops from the network, provided **SBC ILLINOIS** complies with the copper loop or copper subloop retirement rules in 47 C.F.R. 51.319(a)(3)(iii).
- 6.1.6 Notwithstanding anything to the contrary herein, **SBC ILLINOIS's** obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of **SBC ILLINOIS's** hybrid loops, only with respect to any existing capabilities of **SBC ILLINOIS's** hybrid loops. **SBC ILLINOIS** has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.
- 6.1.7 **SBC ILLINOIS** shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (**SBC ILLINOIS**), and in the state specific Appendix Pricing (**SBC ILLINOIS**) or by tariff. **SBC ILLINOIS** will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which **SBC ILLINOIS** is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all **SBC ILLINOISs** include, but are not limited to, : (i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

6.2 Routine Network Modifications – Lawful UNE Dedicated Transport

- 6.2.1 **SBC ILLINOIS** shall make routine network modifications to Lawful UNE Dedicated Transport facilities used by requesting telecommunications carriers where the requested Lawful UNE Dedicated Transport facilities have already been constructed. **SBC ILLINOIS** shall perform routine network modifications to Lawful UNE Dedicated Transport facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Dedicated Transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
- 6.2.2 A routine network modification is an activity that **SBC ILLINOIS** regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of cable and deploying a multiplexer or reconfiguring an existing multiplexer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier, and **SBC ILLINOIS** is not obligated to perform those activities for a requesting telecommunications carrier.
- 6.2.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. **SBC ILLINOIS** is not obligated to perform those activities for a requesting telecommunications carrier.
- 6.2.4 **SBC ILLINOIS** shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to **SBC ILLINOIS's** own customers.
- 6.2.5 Notwithstanding anything to the contrary herein, **SBC ILLINOIS's** obligations with respect to routine network modifications apply only where the dedicated transport transmission facilities are subject to unbundling.
- 6.2.6 **SBC ILLINOIS** shall provide routine network modifications at the rates, terms and conditions set out in this Appendix, and in the state specific Appendix Pricing. **SBC ILLINOIS** will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which **SBC ILLINOIS** is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all **SBC ILLINOIS** include, but are not limited to: (i) splicing. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

6.3 Routine Network Modifications – Dark Fiber Dedicated Transport

- 6.3.1 **SBC ILLINOIS** shall make routine network modifications to UNE Dedicated Transport Dark Fiber used by requesting Telecommunications Carriers for the provision of Telecommunication Services where the requested UNE Dedicated Transport Dark Fiber facilities have already been constructed. **SBC ILLINOIS** shall perform routine network modifications to UNE Dedicated Transport Dark Fiber in a nondiscriminatory fashion, without regard to whether such fiber being accessed was constructed on behalf, or in accordance with the specifications, of any Telecommunications Carrier.
- 6.3.2 A routine network modification is an activity that **SBC ILLINOIS** regularly undertakes for its own customers. Routine network modifications do not include the installation of fiber for a requesting Telecommunications Carrier, nor do routine network modifications include the provision of electronics for the purpose of lighting dark fiber (i.e., optronics), and **SBC ILLINOIS** is not obligated to perform those activities for a requesting Telecommunications Carrier.
- 6.3.3 Routine network modifications do not include constructing new UNE Dedicated Transport Dark Fiber; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. **SBC ILLINOIS** is not obligated to perform those activities for a requesting telecommunications carrier.
- 6.3.4 **SBC ILLINOIS** shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to **SBC ILLINOIS's** own customers.
- 6.3.5 Notwithstanding anything to the contrary herein, **SBC ILLINOIS's** obligations with respect to routine network modifications apply only where the dark fiber transport transmission facilities are subject to unbundling.
- 6.3.6 **SBC ILLINOIS** shall provide routine network modifications at the rates, terms and conditions set out in this Appendix and in the state specific Appendix Pricing. **SBC ILLINOIS** will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which **SBC ILLINOIS** is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all **SBC ILLINOIS** include: dark fiber transport splicing. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

7.1 Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.

9.0 Conversions [numbering will be revised later]

2.16 Conversion of Wholesale Services to UNEs

- 2.16.1 Upon request, **SBC ILLINOIS** shall convert a wholesale service, or group of wholesale services, to the equivalent UNE, or combination of UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, and the UNEs, or combination of UNEs, that would result from the conversion meet the eligibility criteria that may be applicable. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)
- 2.16.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, **SBC ILLINOIS** will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 2.16.3 Except as agreed to by the Parties or otherwise provided hereunder, **SBC ILLINOIS** shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs. **SBC ILLINOIS** may charge applicable service order charges and record change charges.
- 2.16.4 This Section 2.16 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of UNEs offered or otherwise provided for in this Appendix.
- 2.16.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent UNE, or combination of UNEs, CLEC shall not request such conversion or continue using such the UNE or UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a UNE or combination of UNEs, or Commingled Arrangement (as defined herein), **SBC ILLINOIS** may convert the UNE or UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.
- 2.16.5.1 This Section 2.16.5 applies to any UNE or combination of UNEs, including whether or not such UNE or combination of UNEs had been previously converted from an **SBC ILLINOIS** service.
- 2.16.5.2 **SBC ILLINOIS** may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.
- 2.16.6 In requesting a conversion of an **SBC ILLINOIS** service, CLEC must follow the guidelines and ordering requirements provided by **SBC ILLINOIS** that are applicable to converting the particular **SBC ILLINOIS** service sought to be converted.
- 2.16.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects **SBC**

ILLINOIS's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.

- 10.0 [numbering will be revised later]
FTTH Loops, FTTC Loops and Retirement of Copper Loops.

**SBC COUNTER PROPOSES THE FOLLOWING SECTION FOR FTTH LOOPS AND
RETIREMENT OF COPPER LOOPS**

8.2.2 FTTH/FTTC Loops and Retirement of Copper Loops. A fiber to the home/fiber to the curb (FTTH/FTTC) loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, and serving an end user's customer premises. [

8.2.2.1 New Builds. **SBC ILLINOIS** shall not be required to provide nondiscriminatory access to a FTTH/FTTC Loop on an unbundled basis where **SBC ILLINOIS** has deployed such a Loop to an end user's customer premises that previously has not been served by any **SBC ILLINOIS** Loop.

8.2.2.2 Overbuilds. **SBC ILLINOIS** shall not be required to provide nondiscriminatory access to a FTTH/FTTC Loop on an unbundled basis when **SBC ILLINOIS** has deployed such a Loop parallel to, or in replacement of, an existing copper Loop facility, except that:

(a) **SBC ILLINOIS** shall maintain the existing copper Loop connected to the particular customer premises after deploying the FTTH/FTTC Loop and provide nondiscriminatory access to that copper Loop on an unbundled basis unless **SBC ILLINOIS** retires the copper Loop pursuant to the terms of Section 8.2.2.3.

(b) If **SBC ILLINOIS** maintains the existing copper Loop pursuant to this Section 8.2.2.2, **SBC ILLINOIS** need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to this section, in which case **SBC ILLINOIS** shall restore the copper loop to serviceable condition upon request. (c) If **SBC ILLINOIS** retires the copper Loop pursuant to Section 8.2.2.7 below, it shall provide nondiscriminatory access to 64 kilobits per second transmission paths capable of voice grade service over the FTTH/FTTC Loop on an unbundled basis.

8.2.2.3 Prior to retiring any copper loop or copper subloop that has been replaced with a FTTH/FTTC loop, **SBC ILLINOIS** must comply with the network disclosure requirements set forth in Section 251 (c) (5) of the Act and in 47 C.F.R. 51.325 through 51.335 and any applicable state requirements. 8.2.2.10 **SBC ILLINOIS** shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades CLEC's access to, or ability to tap the full capabilities of, a local loop or subloop. As such, **SBC ILLINOIS's** modification of loop plant (e.g., removing copper feeder facilities

**SBC ILLINOIS PROPOSAL for
Discussion Purposes Only/Subject to Modifications
May 6, 2005**

and stranding CLEC's access to distribution subloop) shall not limit or restrict CLEC's ability to access all of the loop features, functions and capabilities, including DSL capabilities, nor increase the price of any loop used by, or to be used by, CLEC. Furthermore, **SBC ILLINOIS** will comply with 47 CFR 51.325 through 51.335, and any applicable state requirements..

8.2.3 Hybrid Loops Generally. A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

8.2.3.2 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services **SBC ILLINOIS** shall provide CLEC with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between **SBC ILLINOIS's** central office and the end user's customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

8.2.3.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision to its customer of narrowband services, **SBC ILLINOIS** may either (a) provide nondiscriminatory access to a spare home-run copper Loop serving that customer on an unbundled basis, or (b) provide nondiscriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology.

8.2.3.3 Feeder. **SBC ILLINOIS** shall not be required to provide access to the Feeder portion of a Loop on an unbundled, standalone basis.

11.0 CLEC may not access **SBC ILLINOIS's** unbundled Network Elements for the exclusive provision of mobile wireless services, or long distance services or interexchange services (i.e. Telecommunications Service between different stations in different exchange areas).

11.1 Mobile Wireless Service is defined as set forth in the FCC TRRO, fn. 97, e.g., A mobile wireless service is any mobile wireless Telecommunications Service, including any commercial mobile radio service

12.0 The terms, conditions and rates relating to access to UNEs (other than those elements addressed in this Amendment) are unaffected by the terms of this Amendment.

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
ILLINOIS BELL TELEPHONE COMPANY
d/b/a SBC ILLINOIS
AND
AT&T COMMUNICATIONS OF ILLINOIS, INC.**

This Amendment entered into by and between SBC Operations, Inc. on behalf of and as agent for Illinois Bell Telephone Company d/b/a SBC Illinois (hereinafter referred to as "SBC Illinois") and AT&T Communications of Illinois, Inc. and any of its current and future Affiliates or subsidiaries which are a Certified Local Exchange Carrier ("AT&T"), in the state of Illinois. SBC Illinois and AT&T may be referred to individually as "Party," or collectively as the "Parties." Affiliate shall have the meaning as set forth in the Act.

WHEREAS, SBC Illinois and AT&T entered into an interconnection agreement, as amended, pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") and approved by the public utilities commission in the state of Illinois (referred to as "Agreement").

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its TRO, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, SBC Illinois is no longer legally obligated to provide those network elements on an unbundled basis to AT&T under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("*USTA II*") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the *USTA II* decision vacated certain of the FCC rules and parts of the TRO requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 ("*TRO Remand Order*"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS"), and holding that an incumbent LEC is not required to provide access to certain high-

¹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs) all subject to certain transition requirements set forth below; and

WHEREAS, based on the specific intercarrier compensation, interconnection, collocation, and other provisions in AT&T's Agreement, the Parties agree to amend the Agreement to extend the applicable term(s) of such Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreement set forth in the Agreement and in this Amendment, the Agreement is hereby amended as follows:

1.0 Scope of Agreement and Lock In

- 1.1 The Whereas clauses contained herein are hereby incorporated into this Amendment.
- 1.2 The Parties agree that this Amendment will act to supersede, amend and modify the applicable provisions currently contained in the Agreement.
- 1.3 The Parties intend that the Agreement, as amended by this Amendment, should govern their business relationship for the specified term(s), subject only to the terms and conditions in such Agreement, as amended by this Amendment, including, but not limited to, the expiration and termination provisions set forth herein. Accordingly, AT&T hereby waives its section 252(i) MFN rights for the remaining term of the Agreement, as amended by this Amendment.

2.0 Effective Date and Term

- 2.1 The Term Sections or similar provisions of the General Terms and Conditions in the Agreement are hereby deleted in their entirety and replaced with the following:
 - 2.1.1 This Agreement, as amended by this Amendment, will be extended for a period of twenty-four (24) months from the Amendment Effective Date unless terminated earlier upon the effective date of a written and signed agreement between the parties that this Agreement is terminated. Absent the receipt by one Party of written notice from the other Party not earlier than one hundred eighty (180) calendar days prior to the expiration of the term to the effect that such Party does not intend to extend the Agreement ("Notice of Expiration"), this Agreement, as amended by this Amendment, shall remain in full force and effect, on a month-to-month basis, on and after the expiration of the term until terminated by either Party upon written notice.
 - 2.1.2 If either Party serves Notice of Expiration pursuant to Section 2.1.1 above, AT&T shall have twenty (20) calendar days to provide SBC Illinois written confirmation if AT&T wishes to pursue a successor agreement with SBC Illinois or alternatively, if AT&T wishes to allow the current Agreement to expire. If AT&T wishes to pursue a successor agreement with SBC Illinois, AT&T shall attach to its written confirmation or Notice of Expiration, as applicable, a written request to commence negotiations with SBC Illinois under Sections 251/252 of the Act. Upon receipt of AT&T's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
 - 2.1.3 If AT&T does not affirmatively state that it wishes to pursue a successor agreement with SBC Illinois in its, as applicable, Notice of Expiration or the written confirmation required after receipt of SBC Illinois's Notice of Expiration, then the rates, terms and conditions of

this Agreement, as amended by this Amendment, shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date AT&T provided or received Notice of Expiration. Unless otherwise agreed by the Parties, if the Term of this Agreement has expired, on the ninety-first (91st) day following AT&T provided or received Notice of Expiration, the Parties shall have no further obligations under this Agreement except those described in Survival of Obligations Section of the General Terms and Conditions.

2.1.4 The terms and conditions and rates and charges contained herein will continue to apply until the earlier of (i) termination by either Party under the terms of this Agreement, as amended by this Amendment; (ii) the date a successor agreement becomes effective, or (iii) the date that is ten (10) months after the date on which SBC Illinois received AT&T's Section 252(a)(1) request, unless an arbitration petition has been filed by either Party, in which case (ii) applies.

2.2 Except as expressly set forth herein, nothing in this Amendment is intended to affect a Party's termination rights under the Agreement including, without limitation, the right to terminate for breach or failure to pay.

3.0 TRO-Declassified Elements

SBC Illinois is not required to provide to AT&T any of the following items either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality, but only to the extent SBC Illinois is relieved of its obligations under the terms of the TRO:

- (i) entrance facilities;
- (ii) DSO or OCn level dedicated transport;
- (iii) "enterprise" market (DS1 and above) local circuit switching (defined as (a) all line-side and trunk-side facilities as defined in the TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);
- (iv) OCn loops;
- (v) the feeder portion of the loop;
- (vi) line sharing;
- (vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;
- (viii) shared transport and SS7 signaling to the extent not provided in conjunction with unbundled local switching;

- (ix) packet switching, including routers and DSLAMs;
- (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; and
- (xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that SBC Illinois has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC Illinois will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

The above-listed items are referred to in this Amendment as "TRO-Declassified Elements."

4.0 Combination and Commingling of Network Elements – TRO Clarifications

- 4.1 As conditions to accessing and using any UNE (whether on a stand-alone basis or in combination with other UNEs, with a network element possessed by AT&T, or pursuant to Commingling), AT&T must be a Telecommunications Carrier (Section 251(c)(3)), and must use the UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)) as permitted by the FCC. AT&T hereby represents and warrants that it is a telecommunications carrier and that it will notify SBC Illinois immediately in writing if it ceases to be a telecommunications carrier. Failure to so notify SBC Illinois shall constitute a material breach of this Agreement.
- 4.2 At the request of AT&T, SBC Illinois shall provide Unbundled Network Elements to AT&T in a manner that allows AT&T to combine those UNEs to provide a Telecommunications Service. Except as provided in this Agreement, including this Amendment, SBC Illinois shall provide access to UNEs without regard to whether AT&T seeks access to the UNEs to establish a new circuit or to convert an existing circuit from a service to UNEs.
- 4.3 "Commingling" means the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one or more facilities or services that AT&T has obtained at wholesale from SBC Illinois, or the combining of a UNE, or combination of UNEs, with one or more such facilities or services. "Commingle" means the act of Commingling.
- 4.4 Subject to the other provisions of this Agreement, including this Amendment, SBC Illinois shall permit AT&T to Commingle a UNE or a UNE combination with one or more facilities or services that AT&T has obtained at wholesale from SBC Illinois. In addition, upon request, subject to the other provisions of this Agreement, including this Amendment, SBC Illinois shall perform the functions necessary to Commingle a UNE or a UNE combination with one or more facilities or services that AT&T has obtained at wholesale from SBC Illinois. Therefore, subject to the other provisions of this Agreement, including this Amendment, (i) AT&T may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services obtained from SBC Illinois (e.g., switched and special access services offered pursuant to tariff), and (ii) SBC Illinois shall not deny access to UNEs and combinations of UNEs on the grounds that such UNEs are connected to, linked to, or combined with wholesale services obtained from SBC Illinois. Notwithstanding

anything to the contrary in this Amendment, SBC Illinois shall have no obligation to perform the functions necessary to combine (or to complete the actual combining) or Commingle (or to complete the actual Commingling) if (i) it is not technically feasible or (ii) it would undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to interconnect with SBC Illinois's network.

- 4.5 SBC Illinois shall not be required to, and shall not, provide "ratcheting"² as a result of a Commingled Arrangement. SBC Illinois shall charge the rates for UNEs (or UNE combinations) Commingled with facilities or services obtained at wholesale from SBC Illinois (including for example special access services) on an element-by-element basis and such facilities and services on a facility-by-facility, service-by-service basis.
- 4.6 In accordance with and subject to the provisions of this Amendment, any request by AT&T for SBC Illinois to perform the functions necessary to Commingle (as well as requests where AT&T also wants SBC Illinois to complete the actual Commingling), shall be made by AT&T in accordance with this Amendment.
- 4.6.1 SBC Illinois has developed the following list of Commingled Arrangements that are available for ordering on a non-BFR basis by AT&T, which list is posted on "CLEC On-line."
- UNE DS1 loop connected to a muxed DS3 special access facility;
 - UNE DS1 transport connected to a muxed DS3 special access facility; and
 - UNE DS3 transport connected to a non-concatenated channelized (special access higher facility);and
 - UNE DS1 loop connected to a dedicated DS1 transport special access facility.
- 4.6.2 As other Commingling Arrangements become developed and tested by SBC Illinois, SBC Illinois may add such Arrangements to the list on "CLEC On-line" that are available without submitting a BFR and AT&T may order such arrangements under this Agreement, as amended by this Amendment. For any Commingled arrangement, SBC Illinois shall charge AT&T the rates and charges applicable to the Section 251 UNE(s) or those applicable to the facilities or services that AT&T has obtained at wholesale from SBC Illinois as well as other applicable rates (e.g. service order charge, record change charge).
- 4.6.3 Any AT&T request for a Commingled Arrangement not found on the above list of Commingled Arrangements and not listed on the "CLEC-On-line," must be submitted via the bona fide request (BFR) process. In any such BFR, AT&T must designate among other things the UNE(s), combination of UNEs, and the facilities or services that AT&T has obtained at wholesale from SBC Illinois sought to be Commingled and the needed location(s), the order in which such UNEs, such combinations of UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them. For such BFR, AT&T shall be charged a reasonable fee for any Commingling work done by SBC Illinois under this Section 4.6.3 (including performing the actual Commingling) in addition to other applicable charges. Such fee shall be calculated using the Time and Material charges as reflected in the Appendix Pricing. SBC Illinois's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling.

² "Ratcheting" is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate.

- 4.6.4 As stated in Sections 4.3 and 4.4 above, a Commingled Arrangement must contain at least one Section 251(c)(3) unbundled network element. If a Commingled Arrangement ceases to have at least one Section 251(c)(3) network element it will no longer be considered a Commingled Arrangement. For purposes of this Section 4.6.4, TRO-Declassified Elements and TRO Remand-Declassified Elements, after completion of the applicable transition period, will no longer be considered Section 251(c)(3) unbundled network elements. If AT&T does not meet or for any reason stops meeting the applicable criteria set forth in Section 4 and/or the Mandatory Eligibility Criteria in Section 6, AT&T shall not request such Commingled Arrangement or continue using such Commingled Arrangement.
- 4.6.5 AT&T and SBC Illinois disagree on whether a Section 271 network element may be included in a Commingled Arrangement that also includes a Section 251(c)(3) UNE. SBC Illinois believes that it is not required to include Section 271 network elements in any Commingled Arrangement, even those that include one or more Section 251(c)(3) UNEs. In contrast, AT&T believes that as long as a Commingled Arrangement includes one or more Section 251(c)(3) UNEs, SBC Illinois must commingle Section 271 elements with such UNE(s) if requested by AT&T. Without waiving any rights and without prejudice to any position AT&T may take in a subsequent proceeding, for purposes of this Amendment, AT&T agrees that it will not order, and SBC Illinois shall not be required to provision, Commingled Arrangements that include one or more Section 271 network elements. SBC Illinois agrees that AT&T's agreement in this section shall not constitute a precedent that can be used against AT&T in any proceeding except a proceeding to clarify and/or interpret this Agreement, including this Amendment.
- 4.6.6 Except upon request, SBC Illinois shall not separate requested UNEs that it currently combines. Except upon request, SBC Illinois shall not separate UNEs from other facilities or services that it currently commingles unless required by other provisions of the Agreement, including this Amendment.

5.0 Conversion of Wholesale Services to UNEs – TRO Clarifications

- 5.1 Upon request, and subject to the criteria set forth in Section 4 and the applicable Mandatory Eligibility Criteria set forth in Section 6, SBC Illinois shall convert a wholesale service, or group of wholesale services to the equivalent UNE, or combination of UNEs that is available to AT&T under terms and conditions set forth in this Agreement, including this Amendment.
- 5.2 SBC Illinois shall not impose untariffed termination charges, or any disconnect fees, re-connect fees or charges associated with establishing a service for the first time in connection with any conversion between a wholesale service or a group of wholesale services and a UNE or combination of UNEs. SBC Illinois shall provide AT&T with the requested conversions with any disruption to the end user's services reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, SBC Illinois shall accomplish such conversions to minimize any disruption detectable to the end user. Where necessary or appropriate, SBC Illinois shall coordinate it with AT&T's representatives to accomplish this goal.
- 5.3 AT&T will issue the appropriate orders to convert wholesale services or a group of wholesale services to UNEs or combinations of UNEs unless the Parties mutually agree to handle such

conversion(s) on a project basis. Applicable charges for UNEs or combinations of UNEs set forth in the Pricing Schedule, of the Agreement shall apply when the order is completed.

- 5.4 If it is determined through an audit and/or dispute resolution process under this Agreement, or AT&T otherwise agrees, that AT&T does not meet or for any reason stops meeting the criteria set forth in Section 4 and the applicable Mandatory Eligibility Criteria in Section 6 for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent UNE, or combination of UNEs, AT&T shall not request such conversion or continue using such the UNE or UNEs that result from such conversion. If pursuant to the preceding sentence, AT&T fails to meet (including ceases to meet) the eligibility criteria applicable to a UNE or combination of UNEs, or Commingled Arrangement (as defined herein), SBC Illinois may convert the UNE or UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to AT&T.
- 5.4.1 This Section 5.4 applies to any UNE or combination of UNEs, including whether or not such UNE or combination of UNEs had been previously converted from an SBC Illinois service.
- 5.4.2 SBC Illinois may exercise its audit rights provided for hereunder in auditing compliance with any applicable eligibility criteria.
- 5.4.3 Nothing contained in this Amendment provides AT&T with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC Illinois's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.

6.0 Mandatory Eligibility Criteria –TRO Clarifications

- 6.1 An Enhanced Extended Loop or "EEL" means a UNE combination consisting of an unbundled loop(s) and unbundled Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNEs (including, for example, multiplexing capabilities).
- 6.2 SBC Illinois is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 or higher transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless AT&T certifies that all of the following conditions (hereinafter the "Mandatory Eligibility Criteria") are met with respect to the arrangement being sought:
- 6.2.1 AT&T (directly and not via an Affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

- 6.2.2 Pursuant to Rule 51.318, the following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS3 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:
- 6.2.2.1 Each circuit to be provided to each customer will be assigned a local telephone number prior to the provision of service over that circuit; and
 - 6.2.2.2 Each DS1-equivalent circuit on a DS3 EEL or on any other Included Arrangement, must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
 - 6.2.2.3 Each circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit; and
 - 6.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 6.3 of this Amendment; and
 - 6.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 6.4 of this Amendment; and
 - 6.2.2.6 For each 24 DS1 EELs, or other facilities having equivalent capacity, AT&T will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 6.4 of this Amendment; and
 - 6.2.2.7 Each circuit to be provided to each customer will be served by a switch capable of providing local voice traffic.
- 6.3 A collocation arrangement meets the requirements of Section 6 of this Amendment if it is:
- 6.3.1 Established pursuant to Section 251(c)(6) of the Act and located at SBC Illinois's premises within the same LATA as the End User's premises, when SBC Illinois is not the collocater; or
 - 6.3.2 Located at a third party's premises within the same LATA as the End User's premises, when SBC Illinois is the collocater.
- 6.4 An interconnection trunk meets the requirements of Sections 6.2.2.5 and 6.2.2.6 of this Amendment if AT&T will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk.
- 6.5 SBC Illinois makes forms available for the certifications required by this Section 6. AT&T prefers an alternative method of certification; accordingly, AT&T agrees to submit a letter, in the form attached hereto as Exhibit 1, dated as of the execution date of this Amendment from an Officer of AT&T to the Vice President of SBC Account Management, certifying that AT&T has implemented procedures such that AT&T certifies that any and all orders it submits, for high capacity EELs, will meet the Mandatory Eligibility Criteria set forth in Section 6.2 on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis. Such certification shall have the same weight and effect as a separate certification, and such certification shall not diminish AT&T's obligation to comply with the criteria or certification requirements set forth in this Section 6.

- 6.5.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), AT&T shall update such certification promptly with SBC Illinois.
- 6.6 *In addition to any other audit rights provided for in the Agreement and those allowed by law, SBC Illinois may obtain and pay for an independent auditor to audit AT&T, on an annual basis, applied on a State-by-State basis, for compliance with this Section 6. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon SBC Illinois's written notice that an audit will be performed for that State, subject to Section 6.6.4 of this Section.*
- 6.6.1 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding AT&T's compliance with the qualifying service eligibility criteria.
- 6.6.2 The independent auditor's report will conclude whether AT&T complied in all material respects with this Section 6.
- 6.6.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.
- 6.6.4 To the extent the independent auditor's report concludes that AT&T failed to comply with this Section 6, AT&T must true-up any difference in payments beginning from the date that the non-compliant circuit did not meet the criteria in Section 6. In addition, AT&T must promptly convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services, and AT&T shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to SBC Illinois. If AT&T fails to promptly convert the UNE or UNE combination or Commingled Arrangement, SBC Illinois may initiate and affect such conversion on its own.
- 6.6.4.1 To the extent that the independent auditor's report concludes that AT&T failed to comply in all material respects with this Section 6, AT&T must reimburse SBC Illinois for the cost of the independent auditor.
- 6.6.4.2 To the extent the independent auditor's report concludes that the AT&T complied in all material respects with this Section 6, SBC Illinois must reimburse AT&T for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).
- 6.6.5 AT&T will maintain the appropriate documentation to support its eligibility certifications, pursuant to Section 6.2.
- 6.7 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, AT&T shall fully comply with this Section 6 in all cases and, further, the failure of SBC Illinois to require such compliance, including if SBC

Illinois provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 6, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.

7.0 Routine Network Modifications – TRO Clarifications

- 7.1 SBC Illinois shall make all routine network modifications, as defined by 47 CFR §§319(a)(8) and 319(e)(5), to unbundled loop and transport facilities used by AT&T where the requested loop or transport facility has already been constructed. SBC Illinois shall perform routine network modifications to unbundled loop or transport facilities in a nondiscriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
- 7.2 A routine network modification is an activity that SBC Illinois regularly undertakes for its own customers. Routine network modifications include, rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that SBC Illinois ordinarily attaches to activate such a loops to activate for its own retail customers under the same conditions and in the same manner that SBC Illinois does for its own retail customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. SBC Illinois will place drops in the same manner as it does for its own customers.
- 7.3 Routine network modifications do not include constructing new loops; installing new cable; securing permits or, rights-of-way; constructing and/or placing new manholes, or conduits; or installing new terminals. SBC Illinois is not obligated to perform those activities for a requesting telecommunications carrier.
- 7.4 SBC Illinois shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC Illinois's retail customers.
- 7.5 SBC Illinois will impose only non-recurring charges for Routine Network Modifications and only in instances where costs relating to such Routine Network Modifications are not already recovered through existing, applicable recurring and non-recurring rates or charges. Charges for Routine Network Modifications shall include non-recurring direct time and material costs of each modification, plus overhead allocation consistent with that applicable to UNEs. Prior to beginning work on any Routine Network Modification, SBC Illinois shall notify AT&T, in writing, of the need for such a modification. If a Routine Network Modification is subject to additional charges, AT&T will be given the option of either canceling the order or requesting a price quote for the required Routine Network Modification. If AT&T requests a price quote, SBC Illinois will not proceed with the Routine Network Modification before receiving an affirmative written response from AT&T. Upon accepting the price quote, AT&T shall be required to pay for the Routine Network Modification, if the order is subsequently cancelled; provided, however, that no charges shall apply if AT&T cancels its order prior to SBC Illinois beginning such modification. ICB rates shall apply to Routine Network Modifications unless and until the Parties negotiate specific rates for such Routine Network Modifications or until specific rates are otherwise established for such Routine Network Modifications through applicable state commission proceedings.

8.0 Access to Local Loop

8.1 Subject to Section 8.2 below, SBC Illinois is prohibited from engineering the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs (either hybrid loops or stand-alone copper loops) provided to AT&T. SBC Illinois shall not engage in any policy, practice, or procedure, that disrupts or degrades access to the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which AT&T may obtain or has obtained access pursuant to this Agreement, including this Amendment, provided, however, that nothing herein shall obligate SBC Illinois to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability.

8.2 Notwithstanding anything to the contrary in the Agreement, as amended hereby, nothing herein shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise or to otherwise change and/or modify its network including, without limitation, through the retirement and/or replacement of equipment, software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

8.3 "Hybrid Loops." SBC Illinois will provide AT&T with access to hybrid loops in accordance with 47 C.F.R. §51.319(a)(2). A Hybrid Loop is a local loop composed of both fiber optic cable usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

8.3.1 Packet switching facilities, features, functions, and capabilities. SBC Illinois is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

8.3.2 Broadband services. When AT&T seeks access to a hybrid loop for the provision of broadband services, SBC Illinois shall provide AT&T with nondiscriminatory access to the time division multiplexing-based (TDM based) features, functions, and capabilities of that hybrid loop including DS1 or DS3 capacity (where impairment has been found to exist) regardless of the type of loop architecture (e.g., NGDLC, UDLC, IDLC) on an unbundled basis to establish a complete transmission path between the SBC Illinois central office and an end user customer premises. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

8.3.3 Narrowband services. For narrowband access, SBC Illinois shall provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing

technology; or to a spare home-run copper loop serving that customer on an unbundled basis.

9.0 TRO Remand-Declassified Elements (Mass Market Unbundled Local Switching and UNE-P) and Transition Period

9.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the *TRO Remand Order*, effective March 11, 2005, AT&T is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with "UNE-P") at UNE rates. Accordingly, pursuant to Rule 51.319(d)(2)(iii), although SBC Illinois shall continue to provide access to Mass Market ULS or Mass Market UNE-P to AT&T for AT&T to serve its embedded base of end-user customers for the transition period specified in Section 9.2 below, beginning on March 11, 2005, the price for Mass Market ULS and UNE-P shall be the higher of (A) the rate at which AT&T obtained such Mass Market ULS and UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable State Commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS and UNE-P, plus one dollar.³ For purposes of this Amendment, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.) AT&T shall be fully liable to SBC Illinois to pay such pricing under this Amendment, including applicable terms and conditions governing failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement. SBC Illinois's transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 9 shall be on an "as is" basis, except that AT&T may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market UNE-P, or may re-configure to permit or eliminate line splitting. Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P, and subject to this Section 9, SBC Illinois shall also continue to provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, and only to the extent the features are "loaded" and "activated" in the switch.

9.1.1 For purposes of this Amendment, the term "embedded base" shall mean Mass Market ULS or Mass Market UNE-P ordered by AT&T from SBC Illinois prior to March 11, 2005, except in states where the applicable public utilities commission has in a final order of general applicability interpreted the meaning of "embedded base" differently. Subject to its rights under Section 12.6, SBC Illinois shall comply with such final orders.

9.2 In order to complete the transition of AT&T's embedded base of Mass Market ULS and Mass Market UNE-P arrangements by March 11, 2006, AT&T will begin issuing the appropriate orders to either disconnect such arrangements or convert to an alternative service arrangement (such as a Total Services Resale (TSR)) beginning no later than January 3, 2006 in accordance with the applicable procedures outlined in SBC's CLEC Handbook. For those AT&T Mass Market ULS/UNE-P embedded base lines remaining in place on January 3, 2006, AT&T must issue orders to either disconnect those lines or convert those lines to an alternative service arrangement in accordance with the applicable procedures outlined in SBC's CLEC Handbook. AT&T must complete such disconnects or conversions on an evenly-distributed daily basis between January 3, 2006 and March 3, 2006. For example, but not by way of limitation, if AT&T has 60 Mass Market ULS/UNE-P lines in place on January 3, 2006, AT&T must submit orders with the requisite due dates such that SBC Illinois is able to complete the disconnection or conversion to an alternative

³ To the extent that the State Commission order raises some rates and lowers others for the aggregate combination of loops, shared transport, and switching (i.e. UNE-P), [SBC ILLINOIS] may adopt either all or none of these UNE platform rate changes.

service arrangement of one AT&T embedded base line per day beginning January 3, 2006 and continuing through March 3, 2006.

9.2.1 To the extent any AT&T embedded base Mass Market ULS/UNE-P lines remain in place at the conclusion of the twelve (12) month transition period, SBC Illinois, without further notice or liability, will re-price such arrangements to market based rates.

9.3 SBC Illinois shall provide AT&T with the requested conversions with any disruption to the end user's services reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, SBC Illinois shall accomplish such conversions to minimize any disruption detectable to the end user. Where necessary or appropriate, SBC Illinois shall coordinate it with AT&T's representatives to accomplish this goal.

9.4 Sections 9.1 and 9.2, above, apply and are operative regardless of whether AT&T is requesting Mass Market ULS or Mass Market UNE-P under the Agreement as amended by this Amendment or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

10.0 TRO Remand Declassified Elements (High-capacity Loop and Transport) and Transition Period

10.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the *TRO Remand Order*, effective March 11, 2005, AT&T is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

(i) Dark Fiber Loops;

(ii) DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

(iii) DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

(iv) Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Element(s)."

10.2 Intentionally left blank.

10.2.1 In connection with access to unbundled dedicated transport pursuant to 47 CFR § 51.319(e), SBC Illinois has identified Tier 1 and Tier 2 wire centers in accordance with the criteria set forth in 47 CFR § 51.319(e)(3). In connection with access to unbundled DS1 and DS3 loops pursuant to 47 CFR § 51.319(a), SBC Illinois has identified wire centers in accordance with the criteria set forth in 47 CFR §§ 51.319(a)(4) and (a)(5). SBC Illinois has posted a listing of all such identified wire centers to its CLEC Online website. SBC Illinois will provide thirty (30) days advance notice to AT&T prior to posting updates to its non-impaired wire center listing.

10.2.1.1 If the number of fiber-based collocators in, and/or the number of business lines served by, a wire center rises such that the classification of that wire center (i) as Tier 1, 2 or 3 would change, for purposes of access to unbundled dedicated transport pursuant to 47 CFR § 51.319(e), or (ii) changes for purposes of access to unbundled DS1 or DS3 loops pursuant to 47 CFR § 51.319(a), SBC Illinois may post to its wire center list at the CLEC On-Line website and shall provide notice to all CLECs in an Accessible Letter, identifying each wire center affected, whether the wire center is affected for purposes of access to unbundled dedicated transport or unbundled DS1/DS3 loops. Such notices will be provided to CLECs each time SBC Illinois updates a wire center list posted on its CLEC Online website pursuant to this Section 10.2.1.

10.2.2 AT&T shall undertake a reasonably diligent inquiry to determine whether a new order for DS1, DS3 or Dark Fiber Transport or DS1 or DS3 Loop(s) (not part of AT&T's embedded base) is disallowed by the criteria set forth in Section 10.1, above, prior to submitting its order to SBC Illinois and self-certify in writing to SBC Illinois prior to submitting its order that based on its reasonable inquiry the order satisfies such criteria. If AT&T makes such self-certification in writing, and to the extent (a) such self-certification is not contrary to a previous finding by the FCC or state commission (or other similar finding) of non-impairment for that element in the applicable wire center and (b) and such elements are otherwise available under this Agreement, including this Amendment, SBC Illinois shall provision (even if SBC Illinois disputes AT&T's self-certification) the requested DS1 or DS3 loop or transport or Dark Fiber transport in accordance with AT&T's order and within SBC Illinois's standard ordering interval applicable to such facilities and, if it desires to do so, SBC Illinois may dispute the self-certification and associated orders pursuant to Section 10.2.2.1, below. AT&T must remain in compliance with its self-certification for so long as AT&T continues to receive the aforementioned facilities and/or services from SBC Illinois and promptly notify SBC Illinois of any non-compliance. If SBC Illinois's wire center list changes, such that facilities in use by AT&T are no longer available as Unbundled Network Elements, pursuant to 47 CFR §§ 51.319(a) or (e), then the parties shall follow the process set forth in Section 10.3.

10.2.2.1 Disputes regarding AT&T's compliance with Section 10.2.2 shall be addressed through the dispute resolution process set out in the Agreement or any available FCC or State Commission processes or proceedings designed to review and approve SBC Illinois's non-impairment designation(s). If the Parties determine through informal dispute resolution, or the applicable State Commission determines in an arbitration or otherwise after formal dispute resolution, or it is otherwise determined by the FCC or State Commission, or other regulatory or legal body or court of competent jurisdiction that AT&T was not entitled to the provisioned facility pursuant to 47 CFR §§ 51.319(a) or (e), as applicable, the rates paid by AT&T for the affected facility shall be subject to true-up to an equivalent month-to-month special access rate as of the later of the date (i) upon which SBC Illinois was no longer required to provide access to the provisioned element pursuant to 47 CFR §§ 51.319(a) or (e), as applicable, or (ii) billing began for the provisioned element. In addition, AT&T shall be required to issue an order to disconnect or to transition from the UNE facility to another service within 90 days after the determination. If AT&T does not issue an order to disconnect or to transition the facility within the 90 day period, then SBC Illinois may transition the facility to a month-to-month special access arrangement.

- 10.2.2.2 In the event of a dispute following AT&T's self-certification pursuant to Section 10.2.2 above, upon reasonable request by the FCC, state Commission or SBC Illinois, AT&T will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, data supporting its self-certification as being consistent with the requirements of the FCC's TRRO, only to the extent necessary to substantiate its self-certification. Upon reasonable request by the FCC, state Commission or AT&T, SBC Illinois will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, data supporting its classification of wire centers as Tier 1 or Tier 2 with respect to unbundled dedicated transport, and its classification of wire centers with respect to unbundled DS1/DS3 loops, only to the extent necessary to justify the classification.
- 10.2.3 Accordingly, pursuant to Rules 51.319(a) and (e), although SBC Illinois shall continue to provide AT&T's embedded base of the Affected Element(s) for the transition period specified in Section 10.3 below, if and as provided by the Agreement, beginning on March 11, 2005, the price for the embedded base Affected Element(s) shall be the higher of (A) the rate AT&T paid for the Affected Element(s) as of June 15, 2004 *plus* 15% or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), *plus* 15%. To the extent the State Commission raises some rates and lowers others for high capacity loops, SBC Illinois may adopt either all or none of these high capacity loop rate changes. To the extent the State Commission raises some rates and lowers others for dedicated transport, SBC Illinois may adopt either all or none of these dedicated transport rate changes. AT&T shall be fully liable to SBC Illinois to pay such pricing under the Amendment, including applicable terms and conditions governing failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.
- 10.2.4 For purposes of this Amendment, the term "embedded base" shall mean Affected Elements properly ordered by AT&T prior to March 11, 2005.
- 10.3 For any Affected Elements, AT&T will issue the appropriate orders to disconnect or convert to an analogous access service (including special access service purchased pursuant to any Optional Payment Plan ("OPP") or other agreement providing for term or volume discounts between AT&T and SBC Illinois, subject to the terms and conditions of such OPP or other agreement.); provided, however, SBC Illinois and AT&T shall mutually agree on a transition schedule for completing the work on such orders to ensure an orderly transition of AT&T's embedded base Affected Element customers to be completed by the end of the transition period defined in the TRO Remand Order (12 or 18 months—March 11, 2006 or September 11, 2006 from the TRO Remand Order's effective date as applicable). Any charges applicable to the OPP or other arrangement shall apply as of that order completion date for such conversion and be reflected in the next available billing cycle.
- 10.3.1 To the extent SBC Illinois modifies the Wire Center List pursuant to Section 10.2.1 of this Amendment, so that additional wire centers/routes/buildings are non-impaired, the Parties agree to work together to develop a mutually agreeable conversion schedule, taking in to consideration the number and location of facilities to be converted not to exceed the later of (i) 90 days or (ii) the applicable FCC transition period(s) specified above.

- 10.3.2 For Dark Fiber Affected Elements, AT&T will remove all AT&T services from such Dark Fiber Affected Elements and return the facilities to SBC Illinois by the end of the eighteen (18) month transition period. If AT&T fails to comply with this section, SBC Illinois, without further notice or liability may disconnect and reclaim the facilities.
- 10.3.3 To the extent that there are AT&T embedded base Affected DS1 or DS3 High-Capacity Loops or Dedicated Transport in place at the conclusion of the 12-month transition period, SBC Illinois, without further notice or liability, will convert them to a Special Access month-to-month service under the applicable access tariffs.
- 10.4 SBC Illinois shall provide AT&T with the requested conversions with any disruption to the end user's services reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, SBC Illinois shall accomplish such conversions to minimize any disruption detectable to the end user. Where necessary or appropriate, SBC Illinois shall coordinate it with AT&T's representatives to accomplish this goal.
- 10.5 Sections 10.3.1 and 10.3.2, above, apply and are operative regardless of whether AT&T is requesting the Affected Element(s) under the Agreement, including this Amendment or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement, including this Amendment or not.
- 10.6 Mass Market ULS, Mass Market UNE-P and the Affected Elements are sometimes collectively referred to in this Amendment as "TRO Remand-Declassified Elements."
- 11.0 Notice and Transition for Declassified TRO Elements**
- 11.1 With the exception of the TRO Remand Declassified Elements for which the FCC has defined a transition period as set forth in Sections 9.2 and 10.3, this Section sets forth the Notice and Transition Processes for Declassified TRO Elements.
- 11.1.1 SBC Illinois is not required to provide the element(s) on an unbundled basis, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality, to AT&T under this Agreement, including this Amendment, and the following notice and transition procedure shall apply. AT&T's ability to Commingle a facility or service previously acquired as a UNE with a UNE or Combination of UNEs is limited as set forth in Sections 4, 5, and 6.
- 11.2 SBC Illinois will provide written notice to AT&T of the fact that the network element(s) and/or the combination or other arrangement in which the network element(s) had been previously provided on an unbundled basis is no longer required to be provided. During a transitional period of thirty (30) days from the date of such notice, SBC Illinois agrees to continue providing such network element(s) pursuant to the terms and conditions of the underlying Agreement.
- 11.2.1 Upon receipt of such written notice, AT&T will cease new orders for such network element(s) that are identified in the SBC Illinois notice letter. SBC Illinois reserves the right to monitor, review, and/or reject AT&T orders transmitted to SBC Illinois and, to the extent that the AT&T has submitted orders and such orders are provisioned after this thirty (30)-day transitional period, such network elements are still subject to this Section 11.2.1, including the AT&T options set forth in Section 11.2.2 below, and SBC Illinois's

right of conversion in the event the AT&T options are not accomplished by the end of the 30-day transitional period.

11.2.2 During such thirty (30) day transitional period, the following options are available to AT&T with regard to the network element(s) identified in the SBC Illinois notice, including the combination or other arrangement in which the network element(s) were previously provided:

- (i) AT&T may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the network element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or
- (ii) SBC Illinois and AT&T may agree upon another service arrangement (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in the Agreement, including any amendments to the Agreement, at the end of the thirty (30) day transitional period, unless AT&T has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 11.2.2(i), above, and if AT&T and SBC Illinois have failed to reach agreement, under Section 11.2.2(ii), above, as to a substitute service arrangement or element, then SBC Illinois will convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale service under the Parties' Agreement or access service or arrangement, if available, at rates applicable to such analogous service or arrangement.

11.3 SBC Illinois shall provide AT&T with the requested conversions with any disruption to the end user's services reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, SBC Illinois shall accomplish such conversions to minimize any disruption detectable to the end user. Where necessary or appropriate, SBC Illinois shall coordinate it with AT&T's representatives to accomplish this goal.

12.0 Miscellaneous

12.1 Except as otherwise provided in this Amendment, the Parties acknowledge the general application and effectiveness of the Agreement's "change of law," "intervening law", "successor rates" and/or any similarly purposed provisions. Accordingly, each of the rights and obligations set forth in this Amendment is cumulative and is in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.

12.2 EXCEPT AS MODIFIED HEREIN OR AS OTHERWISE LATER AGREED BY THE PARTIES IN A WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. This Amendment will become effective as of the Amendment Effective Date, and will terminate on the termination or expiration of the Agreement.

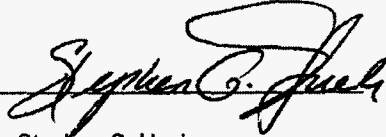
- 12.3 This Amendment shall be effective as of March 11, 2005⁴ subject to any necessary commission approval ("Amendment Effective Date"). In the event that all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the State Commission, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the State Commission; provided, however, that failure to reach such mutually acceptable new provisions within thirty (30) days after such suspension shall permit either Party to terminate this Amendment upon ten (10) days written notice to the other.
- 12.4 This Amendment constitutes the entire amendment of the Agreement and supersedes all previous proposals, both verbal and written, regarding the subject matter covered by the Amendment.
- 12.5 This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.
- 12.6 By entering into this Amendment to obtain the benefits set forth herein in whole or in part, each Party expressly waives its right to challenge the terms of the Agreement as amended by this Amendment, in any judicial, dispute resolution or regulatory proceeding, except that each Party expressly reserves the right to (i) to challenge or support any determination by a state or federal regulatory or legislative bodies or courts of competent jurisdiction relating to the definition and/or scope of the term "embedded base" in Section 9.1.1 of this Amendment or (ii) to seek clarification or interpretation of the terms of this Agreement, including this Amendment, through the dispute resolution process established by the State Commission or challenge in any judicial, dispute resolution or regulatory proceeding regarding the interpretation of this Agreement or any agreement containing the same or substantially similar language to this Agreement, including this Amendment; such right to seek clarification or interpretation or challenge the interpretation also includes the right to appeal the final judicial, dispute resolution or regulatory decision and to continue to pursue pending appeals. When a final decision is rendered by the appellate court, the affected contract provision shall be revised to reflect the result of such appeal. Any dispute between the Parties regarding the manner in which this Agreement, including this Amendment should be modified to reflect the effect of the appellate court decision shall be resolved by the State Commission. Neither Party waives any legal argument, position, or assertion whatsoever in future arbitrations except AT&T waives its right to advocate in future arbitrations that SBC Illinois's voluntarily agreed and/or extended the terms and conditions of the Agreement.

⁴ AT&T agrees that SBC Illinois may bill the transition rates set forth in Sections 9.1 and 10.2.3 [need to make sure these numbers are correct after renumbering] effective March 11, 2005, but SBC Illinois agrees that payment of the increase in rates reflected in such provisions (and billed prior to execution of this Amendment) is not due under the terms of the Agreement until thirty (30) days after this Amendment is fully executed by the Parties.

IN WITNESS WHEREOF, the following signatures on the dates set forth.

AT&T Communications of Illinois, Inc. on behalf of
itself, Affiliates and Subsidiaries

Signature: _____



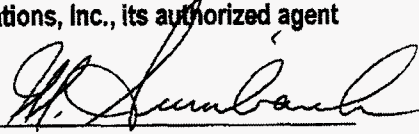
Name: Stephen G. Huels

Title: Region Vice President

Date: 8-1-05

Illinois Bell Telephone Company d/b/a SBC Illinois by
SBC Operations, Inc., its authorized agent

Signature: _____



Name: Mike Auinbaub

Title: AVP - Local Interconnection Marketing

Date: JUL 28 2005

FACILITIES-BASED OCN # 9618

ACNA LOA

I have identified three items, described below, that may be useful in arguing for a freeze on UNE rates as a condition of the proposed SBC/AT&T merger. The most directly relevant is from the FCC's conditions on the SBC/Ameritech merger, in which SBC lowered certain UNE rates for a period of 3 years to spur new local competition, to make up for the lost potential of out-of-region competition between the two BOCs. Second, the Ohio PUC froze SBC's retail rates for a period of 3 years after the merger;¹ there are probably other examples of such state requirements but I did not look further because it seemed a stretch to try to draw support. Third, I have provided info on the NYPSC's consideration of a similar requirement on the Verizon/MCI merger; while it has not been adopted, the discussion is directly relevant to our issue here.

Note that I have reviewed the following merger orders and did not find anything useful: ATT-TCI, SBC-SNET, US West-Qwest, and AOL-TW. I did not separately review the BA-GTE merger order because it is nearly identical to the SBC-Ameritech order.

I. SBC-A Merger Order²

The FCC imposed the conditions described below to provide a period of stability to CLECs and also to induce additional local competition to make up for the lost potential of the two BOCs competing with each other. By comparison, the TDS proposal is actually much more modest, it only freezes rates rather than lowers them. Moreover, if anything these types of conditions are more warranted here than with the prior merger, since AT&T was a real local competitor, not just a hypothetical one. Here is the relevant section of the Order, starting at ¶ 390. Footnotes did not appear useful so were deleted:

390. *Carrier-to-Carrier Promotions.* To offset the loss of probable competition between SBC and Ameritech for residential services in their regions and to facilitate market entry, the Applicants propose three promotions designed specifically to encourage rapid development of local competition in residential and less dense areas. SBC/Ameritech will offer these promotions equally to all telecommunications carriers with which it has an existing interconnection and/or resale agreement in an SBC/Ameritech state. Within ten days of the merger closing, SBC/Ameritech will provide each such telecommunications carrier a written offer to amend the carrier's interconnection agreement in that state to incorporate the promotions. The offering window for each promotion will begin 30 days after the merger closing date and run through the later of: (a) 24 months; (b) the date on which SBC/Ameritech is authorized to provide in-region, interLATA services in the relevant state; or (c) the date on which SBC/Ameritech provides facilities-based service to at least one customer in 15 out-of-territory markets. Notwithstanding this offering window, the conditions specify the maximum number of lines per state for which SBC/Ameritech must provide the

¹ Ohio PUC froze residential retail rates as a condition of approval of the SBC-Ameritech Merger. FCC SBC-Ameritech Merger Order at ¶ 34.

² *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, FCC 99-279 (1999) ("*SBC/Ameritech Merger Order*"). The merger conditions appear as Appendix C to the Order ("*SBC/Ameritech Merger Conditions*").

promotion. As indicated below, SBC/Ameritech will make each promotion available equally to any telecommunications carrier that makes a timely request, and each promotion will last 36 months from the date that the promotional loop, resold service or platform is installed or operational.

391 *Carrier-to-Carrier Promotions: Unbundled Loop Discounts.* First, SBC/Ameritech will offer a promotional discount on the monthly recurring charges for unbundled local loops used in the provision of residential local service and not used in combination with SBC/Ameritech's local switching. The promotional discounted prices are set forth in the conditions and are, on average within each state, 25 percent below the lowest applicable monthly recurring price established by the state commission. SBC/Ameritech will make the promotional loop discount available equally to all telecommunications carriers that request the discount prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months for each loop requested in that period.

392 *Carrier-to-Carrier Promotions: Resale Discounts.* As another means of encouraging residential competition in less dense areas, SBC/Ameritech will offer a promotional resale discount on SBC/Ameritech's retail telecommunications services, where such services are resold to residential customers. The promotional resale discount shall be 32 percent from retail rates for an initial period of not less than 24 months, and, for the remaining period of the promotion, a rate equal to 1.1 times the standard wholesale discount rate established for that service by the state commission (*i.e.*, an additional discount of ten percent). SBC/Ameritech will make the promotional resale discount available equally to all telecommunications carriers that request the discount prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months.

393 *Carrier-to-Carrier Promotions: UNE Platform.* Competitors have asserted that the availability of end-to-end combinations of UNEs is essential for residential competition. To spur residential competition, SBC/Ameritech will offer end-to-end combinations of all network elements required to be unbundled as of January 24, 1999 (including the UNE platform) to competitive LECs providing residential local service regardless of the outcome of the Commission's UNE Remand proceeding. The price for the promotional UNE platform shall be negotiated or established by the appropriate state commission in accordance with federal and state pricing rules for UNEs. SBC/Ameritech will make the promotional UNE platform available equally to all telecommunications carriers that request it prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months from the date the promotional UNE platform is provisioned.

394 *Offering of UNEs.* In order to reduce uncertainty to competing carriers from litigation that may arise in response to the Commission's order in its UNE Remand proceeding, from now until the date on which the Commission's order in that proceeding, and any subsequent proceedings, becomes final and non-appealable, SBC and Ameritech will continue to make available to telecommunications carriers each UNE that was available under SBC's and Ameritech's interconnection agreements as of January 24, 1999, even after the expiration of existing interconnection agreements, unless the Commission removes an element from the list in the UNE Remand proceeding or a final and non-appealable judicial decision determines that SBC/Ameritech is not required to provide that UNE in all or a portion of its operating territory.

II. NEW YORK CONSIDERATION OF VZ/MCI

The Staff of the New York Public Service Commission recommended that the Commission consider requiring Verizon to extend the expiration date of interconnection agreements by three years as a condition of its proposed merger with MCI.³ This type of condition is supported by similar logic, so it may be useful to consider the comments in support (written by KDW) excerpted below:

As a direct consequence of their prospective acquisition by ILECs, MCI and AT&T have ceased to play this role, and the remaining CLEC community simply doesn't have the assets to sustain a defense against a well-funded series of regulatory attacks by Verizon. This invites Verizon to use the regulatory process itself for anticompetitive purposes. To insure the continued ability of CLECs to compete in the New York market following the conclusion of this merger and, presumably the SBC/AT&T merger, CLECs need a significant period of rate and contract stability, devoid of this massive litigation burden and expense. Hence, we proposed that as conditions of the merger, Verizon agree that it will not challenge the existing rates for any UNEs or other regulatory rates imposed by this Commission pursuant to the terms of the Telecommunications Act (*e.g.*, hot cuts, collocation, NRCs, *etc.*) for a period of 5 years. This is also fair. The costs of telecommunications services are declining and the rates currently in place in New York were the result of a negotiated settlement between the parties that were set at a point between the rates that both Verizon and the CLECs thought were appropriate. Further, these rates would apply only where the terms of the Telecommunications Act and applicable FCC rules specify, Nothing in this provision would alter the availability of UNEs themselves.

The same objective of litigation avoidance and commercial stability must be applied to interconnection agreements. Most New York ICAs have expired and are in "evergreen" status. The Commission should required as a condition of this merger that Verizon agree that all current agreements can be reinitiated for a full term, subject only to a set of uniform contract amendments approved by the Commission (*if necessary*) following a brief, global arbitration, and that addresses only the changes of law arising out of the TRO and TRRO.

³ *Joint Petition of Verizon New York Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction over or in the Alternative for Approval of Agreement and Plan of Merger*, Case 05-C-0237, Department of Public Service Staff White Paper at 45 (July 6, 2005).